

STATE EMPLOYMENT
RELATIONS BOARD
2005 FEB 18 A 11: 50

STATUTORY IMPASSE RESOLUTION PROCEDURE
STATE EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR
CONCILIATION OPINIONS AND AWARDS

IMPASSE BETWEEN: *
*
CITY OF WILLOWICK, OHIO * SERB Nos: 03-MED-09-1046
* 03-MED-09-1047
*
-And- * Decision Issued:
* February 14, 2005
*
FRATERNAL ORDER OF POLICE *
FOP Lodge 116 *
* Jonathan Dworkin, Conciliator

APPEARANCES

Thomas Grabarczyk City Advocate
Robert M. Phillips FOP Advocate

* * *

SUMMARY OF IMPASSE

Willowick is a municipality bordering Lake Eire to the north and adjacent to suburbs on the northeast edge of Cleveland, Ohio. Though it is in Lake County, it is regarded as one of Cleveland's suburban communities (Cleveland is in Cuyahoga County). Willowick's population, according to the 2000 census, is 14,361. Though the City is sometimes referred to as a "bedroom community", it is a

chartered City in its own right. Its taxable entities include industries and businesses with annual local payrolls exceeding \$382,000,000.¹

The City maintains a full-time Police Department which, excluding the Chief and one Executive Lieutenant, consists of twenty-two officers – seventeen Patrol Officers, four Sergeants, and one Lieutenant. Fraternal Order of Police (“FOP”) Lodge 116 is their recognized Bargaining Unit,²

The last Collective Bargaining Agreement between the City and FOP was for a term of three years. It expired December 31, 2003. Prior to expiration (and subsequently), the parties negotiated for a new Agreement. The bargaining teams on both sides of the table could not accept several of the proposals presented to them. Consequently, they were compelled to declare themselves at impasse. The impasses were not resolved in mediation and, according to Ohio law, proceeded to factfinding. Marvin Feldman was appointed factfinder. He conducted a hearing July 29, 2004, at which he was confronted with fourteen issues. They included: wage increases, reduction in time required for Patrol Officer to reach top pay, an FOP demand to double the Officer in Charge premium from \$1.00 to \$2.00 per

¹ Data from 2000 census.

² OHIO REV CODE, §4117.14(G)1), as supplemented by OHIO ADMIN. CODE §4117-9-06(E) requires each party to submit a written statement to a conciliator describing, among other items, the size of the Bargaining Unit. The FOP’s prehearing submission stated that the combined Unit is composed of thirty Patrol Officers and twelve supervisory Officers. This did not comport with the evidence. The probability is that there are twenty-two Unit members.

hour, three health care modifications proposed by the City, an education issue, the Union request for two additional working holidays and double-time pay for over-time holiday work, a \$50.00 annual increase in uniform allowance, two FOP proposals to enhance vacation schedules and pay, a sick leave buy-back request by the Union, a new City initiated fitness-for-duty program, and new language on methods for promotion. Somewhat surprisingly, Feldman issued only a recommendation for wage increases and summarily dismissed every other disputed proposal. He premised his recommendation on the unfavorable economic climate in Willowick, surrounding municipalities, and northeast Ohio in general. He stated:

The only item that this fact-finder is willing to discuss is the wage increase request of the bargaining unit. All of the other topics and sub-topics will have to be held for negotiations down the road. Hopefully those further negotiations will take place in a robust time wherein the job loss has been recaptured. Therefore, I am dismissing all of the requests of the union and the city, except the request of a greater wage.

The city, by and through their evidence, has indicated and stated that they can not afford anything more than a one percent increase. It must be recognized however, that the wage increase given across the area in which Willowick is found probably has a wage increase of two and a half percent, at least for the year just concluded. A figure of four-percent [the FOP's demand] is greater than that of which is warranted both under the economic environment of the area and under the economic abilities of the city's budget. Therefore I make a fact-finding Award of two and a half percent per year increase for each of the three years of the contract. While it is less than the amount requested by the

union and more than the one-percent offered by the city, it meets the test of realism by virtue of the cost of living information.³

Simply put, a two and half percent increase, without any other benefits or fringes, seems to be available to the city by some small redistribution of its priorities. Based upon all of that, all of the analysis indicated above, the Award of two and a half percent per year, for each of three years, are hereby awarded by this fact finder.⁴

Predictably, the factfinder's recommendation was rejected. According to law, the parties were then required to submit to conciliation or some other form of binding interest arbitration. They selected conciliation, administered by the State Employment Relations Board ("SERB") under the guidelines of OHIO REV. CODE, Chapter 4117 (Ohio Public Employee Collective Bargaining Law).

ISSUES SUBMITTED TO CONCILIATION; DECISIONAL GUIDELINES

Conciliation is an issue-by-issue decision-making process. Unlike a factfinder, a conciliator is legally prohibited from awarding middle ground between demands and counteroffers. OHIO REV. CODE, §4117.14(G)(7) requires a conciliator to "resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each . . . party's final settlement offers." This narrow

³ According to consumer price index-U, cost-of-living in the midwest has increased an aggregate of 2.5 percent from December 2003 to December 2004.

⁴ Factfinding Recommendations, 5, 7-8.

authority coupled with a conciliator's power to make binding decisions⁵ ordinarily has a salient effect. It forces parties to modify positions and reduce the number of impasse items to what they regard as essential. That is what happened here. The FOP removed several of its proposals from the table and, most notably, reduced its wage-raise demand from 4½% + 4% + 4% to reflect more closely what the factfinder recommended – 2½% + 2½% + 3½%. The City increased its wage offer to 2% + 2% + 2%, but offered no other increments to its original positions.

* * *

The parties took eight surviving issues to conciliation:⁶

1. **WAGE INCREASES:** Rev. Code §4117.14(G)(11) prohibits a conciliator from awarding retroactive pay or other matters with cost implications until the next fiscal year after SERB ordered final-offer settlement procedures. The Section ends with the statement: "The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement." This language has been interpreted

⁵ REV. CODE §4117.14(I) states: "The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award."

⁶ As will be observed, there were ten issues initially, but the FOP withdrew two at the hearing

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as allowing negotiators to make their own decisions concerning retroactivity. The FOP and Willowick agreed to make wages and economic issues awarded retroactive to January 2004. Accordingly, the Union's final offer is for increases of 2.5% commencing January 1, 2004, 2.5% commencing January 1, 2005, and 3.5% commencing January 1, 2006. The City's counteroffer for January 1, 2004, January 1, 2005, and January 1, 2006 is 2% + 2% + 2%.

2. **TOP PAY:** Under the last Agreement, members of the Unit did not receive top pay until they had served six or more years. The FOP proposal is to reduce the time to six years so that top rate would be paid to an Officer on his/her sixth anniversary. The City rejects the proposal.

3. **OFFICER IN CHARGE PREMIUM:** Article 11, §11.05 states: "Any patrol officer who is assigned to act in the capacity of Officer In Charge shall receive a premium of One Dollar (\$1.00) per hour for each hour so worked." FOP negotiators seek to double the amount of the premium to \$2.00 per hour. The City rejects the proposal and offers no counteroffer.

4. **MEDICAL INSURANCE:** This item consists of a proposal from each side, neither of which is responsive to the other. The FOP submitted a declining formula for employee contribution:

Establish fixed contribution to premium at \$150 per month for family plan and \$55 for single plan during 2004/2005. Reduce contribution to premium to

\$100 and \$35 respectively in 2006. Increase Rx deductible co-pay to \$5/\$10.

The City has proposed, as its final offer, a major overhaul of the current health-insurance program provided by Qual-Choice. As it will be explained further, part of the reason is that Qual-Choice has currently agreed to pay the extraordinary costs of an Officer's former wife who is suffering from cancer. The obvious purpose of the Employer's proposed amendments to Article 12 is to relieve itself of this burden. The following is the City's entire proposal on health insurance, as presented at the conciliation hearing:

ARTICLE 12
HEALTH INSURANCE

12.01 Health insurance benefits shall be at least equal to those currently provided by the City for the duration of this contract. The City maintains and preserves its right to determine by whom and the manner in which such benefits are provided.

12.02 [Notwithstanding §1201] Effective upon execution of the Agreement, [the City may] eliminate authorization allowed by Qual-Choice to continue coverage of an ex-spouse except as provided by COBRA.

Effective April 1, 2005, the prescription plan limits may be modified by the Employer from the current \$3.00/\$5.00 plan up to a \$5.00/\$10.00 plan with mail in required for maintenance prescriptions at a two (2) month co-pay for a ninety (90) day supply.

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12.03 The City shall pay up to and including the following amounts per month towards health insurance:

<u>CONTRACT YEAR</u>	<u>FAMILY</u>	<u>SINGLE</u>
Effective 4/01/01	\$665.51	\$232.00
Effective 4/01/02	\$692.13	\$242.20
Effective 4/01/03	\$719.82	\$251.89

<i>Effective 1st of month after execution 2004 or 30 days from issuance of an award</i>		
	\$734.22	\$256.93
4/01/05	\$748.90	\$262.07
4/01/06	\$763.88	\$267.31

Bargaining Unit members with family and single coverage shall pay the monthly excess over the above amounts up to and including the following.

<u>CONTRACT YEAR</u>	<u>FAMILY</u>	<u>SINGLE</u>
Effective 4/01/01	\$ 47.07	\$ 13.35
Effective 4/01/02	\$ 49.07	\$ 13.00
Effective 4/01/03	\$ 51.77	\$ 14.44

<i>Effective 1st of month after execution 2004 or 30 days from issuance of an award</i>		
	\$ 52.81	\$ 14.73
4/01/05	\$ 53.87	\$ 15.02
4/01/06	\$ 54.95	\$ 15.32

If the monthly premium exceeds the total of the liability of the City and Bargaining Unit member as stated above, the City shall pay seventy percent (70%) of the excess and the Bargaining Unit members holding family and single coverages shall pay thirty percent (30%) of the excess.

~~12.03~~ In an effort to reduce cost or in the event monthly premiums increase more than twenty percent (20%) in any renewal, the City shall seek alternative methods or bids in an attempt to reduce costs.

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12.04 A City-wide health care cost containment committee shall be established as an informational and advisory committee. The committee shall be comprised of a member of each Bargaining Unit and a member of Non-Bargaining employees, as well as representation of the Mayor and City Council. Meeting times shall be established by the committee. The purpose of the committee shall be established to disseminate information, monitor costs and expenses, review plan particulars, and advise on elements of the insurance program.

12.05 The City shall provide at no cost to the employee, term life insurance in the amount of \$20,000.00, effective on the first of the next month following employment.

5. **Education:** The FOP withdrew this proposal at the hearing.
6. **Holidays:** The last Agreement provided eleven legal holidays each calendar year plus three personal days. The Union proposes adding two holidays – Memorial Day and New Year's Eve *if worked*. It also requests double-time pay for all hours worked in excess of eight hours on those holidays. The language offered is:

If worked, Memorial Day and New Year's Eve shall be added and paid at 1½ times the regular rate of pay in addition to other entitlements. For all hours required to be worked in excess of 8 hours on those holidays an employee will be paid at 2x the regular rate of pay.

The Employer opposes this amendment.

7. **Uniform Allowance:** The current uniform allowance is \$750.00 per year, plus stipends for home cleaning. Citing comparable municipalities, the FOP requests an additional \$30.00 per year. This is

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consistent with past Collective Bargaining Agreements, which moved the allowance up annually. However, because the City claims to be in a financial shortfall, it rejects the proposal.

8. **Vacation:** The 2001-2003 Agreement provided the following paid vacations for Unit members, based on years of service:

<u>YEARS OF SERVICE</u>	<u>VACATION IN WEEKS</u>
1 or more but less than 5	2 weeks
5 or more but less than 10	3 weeks
10 or more but less than 16	4 weeks
16 or more	5 weeks

The FOP requests another vacation category for employees with twenty year's service and a reduction in the number of years required to earn five weeks. This would amend the Agreement to allow five weeks at fifteen year's service and six weeks at twenty years. The City rejects the proposal.

9. **Sick Leave:** The Union's bargaining team withdrew this proposal at the table.
10. **Fitness for Duty:** The Employer has presented a new article providing that an employee may be removed in a non-disciplinary manner when s/he is no longer fit for duty. This has always been true to my knowledge, and I initially saw no purpose to the provision. A similar proposal was made in negotiations between the Employer and Willowick Firefighters Association. Factfinder Daniel G. Zeiser reviewed the proposal with remarkable thoroughness. His comments could well be incorporated into my decision, thereby

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making it more complete and erudite. The following excerpts from the Zeiser factfinding are pertinent:

Findings: The Employer seeks to add this provision to set forth its ability to remove an employee who is found medically unfit for duty. This has been considered a management right. However, the law has changed so that the parties must negotiate anything that affects wages or conditions of employment. A number of northeast Ohio jurisdictions have such a provision. The Employer desires the ability to remove employees when necessary.

The Union opposes the Employer's proposed language. There are provisions set forth in the Ohio Administrative Code that allow for removing employees. It provides adequate safeguards for employees, including allowing the employee to use all of his or her disability leave prior to being removed, providing the employee the right to a hearing and appeal from that hearing, allowing an employee to voluntarily separate based on disability, and the right to reinstatement.

The parties do not disagree that a provision on fitness for duty should be made part of the Agreement. They disagree on the particular language and method for removing an employee. The Union's position as to providing adequate safeguards for employees is well taken. Any such provision should include safeguards to prevent an employee from being removed unnecessarily. The Employer's language does not include adequate protections. The Ohio Administrative Code language introduced by the Union provides the preferred model for removing employees. Any such provision should incorporate this language and its protections.

Recommendation: The Fact Finder concludes that a new article, entitled Fitness For Duty, should be

made part of the Agreement. The article should adopt the language of Ohio Administrative Code Sections 123:1-33-01, 123:1-33-02, 123:1-33-03, and 123:1-33-04 or, at the very least, should reference these sections and make clear that any attempt to remove and employee must conform to the requirements set forth in those sections.

* * *

Conciliators, despite their jurisdiction to make binding awards, are not unbridled in their decision-making processes. Ohio law requires them to premise their findings and awards on six guidelines:⁷

(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;

⁷ OHIO REV. CODE §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 their presentations, the parties made reference to almost all of these guidelines. Of course, the past Collective Bargaining Agreement [guideline (a)] was relevant. So was guideline (b). Both parties furnished me with numerous wage and benefit facts from other municipalities that they considered comparable.

Guideline (c) overshadowed all the others, at least in the City's presentation. Its chief argument was that it could not afford to maintain community services if it was compelled by my awards to spend the money the FOP demanded.

Guideline [(d) – an employer's lawful authority] is a rarity in Ohio public-sector factfinding and conciliation. But here the Union lodged a profound challenge against the Employer's authority to amend medical insurance so as to exclude ex-spouses. It vigorously argued that such a change would violate federal and state law, as well as, a court order. In the FOP's judgment awarding the City's position on this impasse guideline would exceed my jurisdiction.

Guideline (e) (stipulations) was considered only in conjunction with the two impasse items that the Union withdrew. And the last guideline is always a part of proceedings such as this. The legislature structured it broadly and with enough vagueness to allow decisions to be made based on a factfinder's or conciliator's

ideas of fundamental fairness. This mandate might also include technical considerations, such as job slotting and the like. But most often it is used to support fairness and equity for both management and its bargaining unit.

To the extent that they were addressed by the parties, I considered each of these guidelines in issuing the following decisions and awards. But as in any controversy of this kind, some were more influential than others.

DISCUSSION & DECISIONS

Salary increments and health-care revisions are pivotal to the entire impasse. Both issues are most closely governed by statutory guideline (c) — comparing ability to pay with public interests and welfare. This comparison requires bargaining teams to justify their positions with hard economic evidence. It also requires the neutrals to review, comprehend, and resolve discrepancies. In the final analysis, facts and figures are the substance of decision-making on economic impasses.

Ordinarily, in public-sector interest disputes, unions and employers furnish evidence and documents prepared and attested to by financial experts — a city treasurer for the employer and independent accountant for the union. Since I am not as well educated in these matters, I have found it beneficial to recess hearings so that the two experts can confer alone and reduce their figures to something

more easily understandable. Often, after meeting, they return to the hearing in at least partial agreement on the state of the public employer's financial health and its ability to fund bargaining unit demands. Unfortunately, this hearing was too complex and lengthy for that process. I received the raw data, which was conflicting in several respects, and tried to arrive at my own conclusions.

When negotiations for the 2001-2003 Agreement ended, the Police had received generous wage increases (according to nationwide standards in those years) of 3 ½% + 4% + 4%. According to the City, its resources have declined significantly since then. Operational costs, which include wages, have increased \$1.2 million. To accommodate the depreciation in its financial resources, the Employer has reduced or eliminated operational expenditures and has cut the current year's budget by nearly \$400,000. The city concedes that a parcel of land is being cleared in Willowick for new home construction and it is expected that this will generate more spendable dollars in the future, but not until 2007. According to its financial data, Willowick has anticipated and prudently cut services in an attempt to meet its projected shortfall. The City furnished the following exhibit to illustrate its point:

2003

General Fund Items reduced or cut at the 2003 Budget Hearings with the Mayor and Council:

\$	(35,692.00)	50% reduction in part-time patrolman hours
\$	(15,000.00)	Overtime reduction

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\$	(16,550.00)	Elimination of capital equipment- replacement PC'S etc.
\$	(13,450.00)	Elimination or significant reduction to Schools & Training for Directors
\$	(13,000.00)	Eliminated funding to the recreational leagues
\$	(21,000.00)	Eliminated subsidizing Laketran rides for Senior Citizens
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\$	(114,692.00)	

2004

In addition to the reductions for capital purchases from the General Fund, the following items were reduced or cut from the Fund at the 2004 Budget Hearings with the Mayor and Council:

\$	(43,140.00)	Reduction to [part-time] police wages & benefits
\$	(1,110.00)	Reduced park security from June to Aug versus May to Sept. previously
\$	(3,975.00)	Wages & benefits due to reduction to hours of pool operations
\$	(87,000.00)	Savings for garbage collections due to the re-bid & subsequent cancellation of current contract
\$	(16,300.00)	Wages & benefits for 2 summer employees removed (General Fund- Transportation)
\$	(50,000.00)	Discontinue Sidewalk Program
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\$	(201,525.00)	

2004

In addition to reductions and cuts included in the 2004 Budget, the City has 1) not filled several positions as they became vacant 2) not returned some seasonal employees 3) reduced operational expenditures throughout the year. The following represent some of the more significant variations in actual vs. budget figures.

\$	(31,523.00)	Police Officer-no replacement hired to-date (wages & benefits)
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\$	(17,000.00)	Dispatcher was not immediately replaced (wages & benefits)
\$	(5,095.00)	Fire Dept. secretary was not immediately replace (wages & benefits)
\$	(16,350.00)	Firefighters [year-to-date] wages are down (wages & benefits)
\$	(9,651.00)	Parks-summer seasonal not returned (wages & benefits)
\$	(13,191.00)	Pools-close monitoring and adjustments to staffing (wages & benefits)
\$	(48,637.00)	Building Inspector-no replacement hired (wages & benefits)
\$	(37,130.00)	Traffic Dept-no replacement hired (wages & benefits)
\$	(44,957.00)	Mayor secretary-no replacement hired (wages & benefits)
\$	(12,444.00)	Deputy Finance Director was not immediately replaced (wages & benefits)
\$	(22,216.00)	Overtime-Service Dept.
\$	(14,000.00)	Electrical repair not needed
\$	(41,400.00)	Engineering fees
\$	(71,883.00)	Workers comp premium
<hr/>		
\$	(385,447.00)	

These reductions and cutbacks produced general fund savings of close to \$702,000. A financial analysis was carried out for the FOP by an independent C.P.A. organization, Rosenbaum & Associates. It was presented to me for review. It was extraordinarily comprehensive and supported the conclusion set forth at the beginning of the report:

The overall financial health and well being of the City of Willowick has been relatively constant over the past several years, and ***Willowick is in essentially the same financial position as when the last contract was negotiated.***

If this is true, the almost three-quarters of a million dollars in savings was what was needed to restore the City to its 2001 financial standing. Apparently, the Fire-fighters' and Dispatchers' Units acknowledged this fact when they accepted raises of 2% + 2% + 2%. I would be inclined to grant the City's position on wages were it not coupled with its position on health insurance.

The FOP's objection to the City's proposal to drop Qual-Choice as the insurance carrier is, according to the Union, primarily designed to remove a cancer victim from coverage. On October 7, 2003 a court of common pleas granted a dissolution between an officer and his now ex-spouse. The decree stated in part:

Husband shall maintain family coverage from his health insurance carrier through his employment . . . Wife shall be entitled to remain on her husband's medical insurance plan until her remarriage as long as the coverage remains available to her through the medical insurance carrier. Three months later the Employee's former wife was diagnosed with cancer. She is currently undergoing expensive treatment – radiation and chemotherapy. The cost has been assumed by Qual-Choice.

The Union's main objection is set forth in the following paragraph from its brief:

In a not-too-subtle attempt to discard [the former spouse] and her cancer as a qualified recipient of the City's medical insurance, the City has proposed to "eliminate [the] authorization allowed by Qual-Choice to continue coverage of an ex-spouse . . ." By extension and also in a not-too-subtle attempt, after "dumping" [her] and her cancer, the City will no doubt opt for an entirely different (cheaper) health care provider as permitted by previous contract language.

It is contended that a conciliator cannot violate this court order, nor make any ruling that would violate the Federal Employee Retirement Insurance Security Act (ERISA) or the insurance portability act that it was incorporated into it in 1996. Furthermore, the Union urges that to remove the cancer victim from coverage would be contrary to public policy and in violation of the Americans with Disabilities Act (ADA). I respectfully disagree with all these arguments. The laws referenced by the Union comprehend employees not ex-spouses of employees. Neither the City or the Union was a party to the dissolution and, moreover, the decree was binding only so long as the insurance was available. In other words, if the parties were to bargain insurance coverage that was not available to the ex-wife, the decree would become moot.

* * *

I am convinced that the City lacks the wherewithal to finance all of the FOP's economic demands. In that regard, I understand and do not dispute the rationale behind the truncated Feldman recommendation. I also find that the City's proposal to reduce health-care costs is responsible, reasonable, and should be awarded. That does not mean I am unsympathetic with the woman who will lose her cancer coverage, but I believe that the City of Willowick and this entire Bargaining Unit cannot be held hostage to one individual's need. This decision, in my opinion, is consistent with the many court rulings that arbitrators are prohibited from making awards based solely on their individual ideas of mercy and justice.

I am further convinced by the City's evidence that the remainder of the FOP's economic proposals are not currently affordable. They will all be denied, however, some of them, such as the additional longevity step and increased uniform allowance are justified and should be brought back to the table in 2007.

* * *

One issue remains – the City's Fitness-for-Duty proposal. As Factfinder Zeiser pointed out, the City already had the right under Ohio Administrative Law to remove employees with long term disabilities. In his recommendation on the subject, he added the administrative law provisions and also the right of the affected employee to appeal to arbitration. I think the FOP will agree that arbitration is preferable to an administrative law hearing. Since the City included the Zeiser amendments in its proposal, I can see no legitimate reason why it should not be awarded.

AWARDS

ARTICLE 11 WAGES

11.01 Effective retroactive to January 1, 2004, employees employed as of ratification by the City shall receive an increase in base wage by two and one-half percent (2½%).

Effective and retroactive to January 1, 2005, – Increase base wage by two and one-half percent (2½%).

Effective January 1, 2006, – Increase base wage by three and one-half percent (3½%).

11.03 TOP PAY

The City's position is awarded. The top pay formula in the last Collective Bargaining Agreement shall be carried forward into the 2004-2007 Agreement.

11.05 OFFICER IN CHARGE PREMIUM

The City's position is awarded. The Officer In Charge premium shall be carried forward from the last Agreement into the next one.

ARTICLE 12 HEALTH INSURANCE

The City's proposal is awarded, and the FOP's is denied. Article 12 shall be amended as follows:

12.01 Health insurance benefits shall be at least equal to those currently provided by the City for the duration of this contract. The City maintains and preserves its right to determine by whom and the manner in which such benefits are provided.

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12.02 [Notwithstanding §1201] Effective upon execution of the Agreement, [the City may] eliminate authorization allowed by Qual-Choice to continue coverage of an ex-spouse except as provided by COBRA.

Effective April 1, 2005, the prescription plan limits may be modified by the Employer from the current \$3.00/\$5.00 plan up to a \$5.00/\$10.00 plan with mail in required for maintenance prescriptions at a two (2) month co-pay for a ninety (90) day supply.

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12.05 The City shall provide at no cost to the employee, term life insurance in the amount of \$20,000.00, effective on the first of the next month following employment.

ARTICLE 14 SCHOOLING

14.01 The FOP withdrew this proposal.

ARTICLE 17 UNIFORM ALLOWANCE

17.01 The City's position is awarded. The language and amounts in the 2001-2003 Agreement shall be carried forward through the 2004-2007 contractual term.

ARTICLE 19 SICK TIME

The Union withdrew its proposal on this article. Consequently, no award is issued.

ARTICLE 22 VACATION

22.01 ANNUAL VACATION

The City's position is awarded. The language in the 2001-2003 Agreement is incorporated herein by reference, without change.

ARTICLE 23 HOLIDAYS

23.01 TIME OFF FOR HOLIDAYS

The City's position is awarded: The FOP's is denied. This provision shall remain unchanged in the next Agreement.

NEW ARTICLE FITNESS FOR DUTY

The City's proposal will be awarded. The Agreement shall be amended by the addition of the following language:

Section 1.

An employee found unfit for duty or unable to return to service after an extended medical leave as authorized by the Employer, shall be removed from employment in a non-disciplinary manner.

Section 2.

Initial determination may be based on the employee's physician's medical statement or, at the Employer's expense, an employee may be required to submit to a medical examination to determine fitness for duty pursuant to OAC 123:1-33-01.

Section 3.

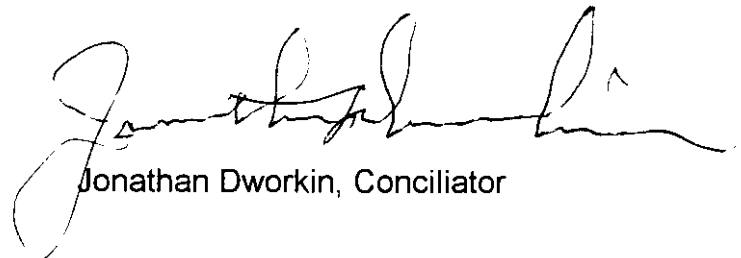
A pre-separation hearing will be offered in the case of an involuntary disability separation, pursuant to OAC 123:1-33-02. Voluntary disability separations shall be processed pursuant to OAC 123:1-33-03.

Awards Issued at Lorain County, Ohio, February 14, 2005

Jonathan Dworkin, Conciliator

SERVICE

I certify that true copies of these Decisions and Awards were served by U.S. Express Mail on Labor Relations Management, Inc. Tom Grabarczyk, Consultant and Advocate for the City of Willowick, Suite L-2, 6800 West Central, Toledo, Ohio 43617, and to Robert Phillips, Esq., Faulkner, Muskovitz & Phillips, LLP.. Attorney and Advocate for FOP Lodge 116, Ninth Floor, 820 West Superior Avenue, Cleveland, Ohio 44113-1904, this 14th day of February, 2005. A copy also was sent to SERB by First Class mail on the same date.



Jonathan Dworkin, Conciliator