

STATE EMPLOYMENT
RELATIONS BOARD
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**IN THE MATTER OF CONCILIATION
BETWEEN**

CITY OF EAST CLEVELAND)
)
) **CASE NO. 03-MED-10-1063**
)
AND)
)
) **CONCILIATION AWARD**
)
OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)

JAMES M. MANCINI, CONCILIATOR

APPEARANCES:

FOR THE CITY

Jon M. Dileno, Esq.

FOR THE UNION

Mark J. Volcheck, Esq.

SUBMISSION

This matter concerns conciliation proceedings between the City of East Cleveland (hereinafter referred to as the Employer or City) and the Ohio Patrolmen's Benevolent Association (hereinafter referred to as the OPBA or Union). The State Employment Relations Board (SERB) duly appointed the undersigned as conciliator in this matter. Conciliation proceedings were held on November 30, 2004.

The conciliation proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the conciliation proceeding, this conciliator attempted mediation of the issues at impasse. The issues remaining for this conciliator's consideration are more fully set forth in this report.

The bargaining unit consists of all Patrol Officers in the City's police department. There are approximately thirty-two employees currently in the bargaining unit.

This conciliator in resolving the dispute between the parties by selection between each of the parties' final settlement offers has taken into consideration the criteria set forth in Ohio Revised Code Section 4117.14(G)(6)(7). Further, this conciliator has taken into consideration all reliable evidence presented relevant to the outstanding issues before him. Therefore, this conciliator after carefully reviewing all of the evidence and arguments presented by the parties, hereby submits his findings of fact, Opinion and Award with respect to each of the outstanding issues presented herein.

1. WAGES

The Union proposes that there be no general wage increase for the current year 2004, but that employees be provided with a one time signing bonus of \$700 to be paid no later than thirty days after execution of the Contract. For the second and third years of the Agreement, the Union proposes that the wage scales be increased by 2% each year. The City proposes that there be a wage freeze for 2004, a 2% increase on January 1, 2005, and another 2% wage increase effective January 1, 2006.

The Union contends that its position is in line with that which was recommended by the fact-finder herein. In addition to the across-the-board increases of 0%, 2% and 2%, the fact-finder awarded an extra \$700 as a one time signing bonus. The Union points out that the patrol officers in East Cleveland are paid well below the average for the area. Moreover, the patrol officers are experiencing a significant reduction in real wages as a result of the healthcare change implemented in March 2004 by the City. Since that time, employees have been required to contribute up to approximately \$147 per month for family coverage. Finally, the Union submits that the \$700 one time signing bonus is justified because unlike the ranking officers, the patrol unit has incurred layoffs. As a result of the reduction in force, the patrol officers must now work in a far more dangerous environment.

The City points out that it has been in a state declared fiscal emergency for fifteen years. Revenues have continued to decline and in a desperate measure to balance

its budget in the last few years, the City has had to undergo layoffs and large-scale cutbacks. The City submits that it cannot afford to incur any additional costs or it may be forced to make additional cuts from the budget. In that regard, the City maintains that it simply cannot afford to fund the \$700 one time lump sum bonus which was recommended by the fact-finder. In all other respects, the City notes that its wage proposal is the same as that proposed by the Union herein with a wage freeze the first year, and 2% wage increases in each of the final two years of the Contract.

ANALYSIS – This conciliator has carefully reviewed the evidence submitted herein with respect to the issue presented regarding the one time signing bonus of \$700. It should be noted that in all other respects, the wage proposals submitted by the City and the Union are identical. That is, each has proposed that there be a wage freeze for 2004, with additional 2% wage increases effective on January 1, 2005 and January 1, 2006. At issue therefore is the payment of the one time lump sum signing bonus of \$700 which was recommended by the fact-finder.

This conciliator has determined that the evidence supports the Union's request for a one time signing bonus of \$700 which is to be paid no later than thirty days after execution of the Contract. This conciliator finds that it would be reasonable to provide a \$700 signing bonus to the patrol officers in the bargaining unit. Unlike the other safety force units, the patrol unit has incurred layoffs. It was shown that eight patrol officers were recently laid off by the City. As a result of the reduction in force, it is undisputed

that the patrol officers must now perform their duties in a much more dangerous environment. A maximum of three to four patrol officers are now assigned to patrol the streets per shift. Therefore even though none of the other safety force units were granted a \$700 signing bonus, it appears that there is justification for such a payment being made to the patrol unit which has incurred layoffs.

Moreover, the evidence showed that patrol officers in the City of East Cleveland are seriously underpaid in comparison to others in surrounding jurisdictions. With respect to other police units in Cuyahoga County, it was shown that the East Cleveland patrol officers are paid between twenty-five and thirty percent below the average. The top wage currently for patrol officers in the City of East Cleveland is approximately \$38,570. As indicated, part of this conciliator's award will be that the patrol officers will be taking a wage freeze for the year 2004. Considering that patrol officers' wages will not be increased for the current year and that their wages fall well below the average for the area, it must be held that the \$700 one time signing bonus is reasonable for the patrol officer unit.

It should also be pointed out that the patrol unit like other employees in the City were asked to contribute more towards health insurance beginning in March 2004. The patrol unit like others agreed with the City's plan to achieve savings with respect to healthcare costs. As a result, they began to pay up to \$1,500 more per year for health insurance than under the previous Contract. It appears that the substantial increase in

healthcare contributions made by the Union members was a significant factor which the fact-finder took into consideration in recommending the \$700 one time lump sum signing bonus. This conciliator would also agree that the healthcare change implemented in March 2004 which had a significant impact on real wages for the patrol officer unit must be given considerable weight in the instant matter.

Finally, this conciliator has determined that the City has the ability to finance the \$700 one time signing bonus. It was shown that the City will achieve substantial savings from the layoffs which took place earlier this year. This includes the layoff of eight patrol officers. As attested to by Brian Thompson, the City's Finance Director, the City will achieve a savings of approximately \$68,000 in the current year from the layoffs which took place. In 2005, the City projects a net savings of approximately one million dollars from the layoffs which occurred. It should be noted that with respect to its safety forces, the City laid off corrections officers and dispatchers besides eight patrol officers during the past year. It was estimated that the cost to the City of the one time \$700 signing bonus would be approximately \$40,000 for the entire bargaining unit here including those who were previously laid off. This conciliator finds that this additional cost to the City can be financed from the savings achieved from the layoffs which have taken place during the past year.

AWARD

With respect to wages, this conciliator selects the Union's final wage proposal as more fully set forth below:

COMPENSATION

Effective January 1, 2004 the wage scale shall not be increased but employees, including those laid off in 2004 shall be paid a one-time signing bonus of Seven Hundred Dollars (\$700.00) (not to be rolled into base pay) to be paid no later than thirty (30) days after the execution of this Contract.

Effective January 1, 2005, the wage scale shall be increased by two percent (2%).

Effective January 1, 2006, the wage scale shall be increased by two percent (2%).

2. COURT TIME/CALL-IN TIME

The City proposes to reduce the court time/call-in minimum pay from four to two hours. The Union in its amended final offer proposes that there be a minimum of three hours pay or actual time worked, whichever is greater, for court time/call-in time.

The City contends that its proposal on court time/call-in time follows the recommendation of the fact-finder. The City contends that its fiscal crisis justifies concessions from its employees. In particular, there is a need to reduce overtime costs in the police department. One way this can be done is to reduce the minimum payment for court time and call-in time. The City notes that there are a number of comparable jurisdictions that pay minimums which are less than four hours for court time and call-in time.

The Union strongly opposes the City's attempt to diminish this longstanding benefit for the already underpaid patrol officers. It submits that its amended proposal regarding minimum court time/call-in pay is more reasonable than that presented by the City. The Union cites comparables in support of its position claiming that few jurisdictions provide for the kind of reduced court time/call-in minimums proposed by the City.

ANALYSIS – This conciliator has determined that the Union's amended final offer with respect to minimum court time/call-in pay is the more reasonable of the two final offers presented. It should be reiterated that the OPBA amended its final offer on

court time/call-in minimum pay from the current language to three hours. Therefore an employee in an off-duty status who is ordered to report to work or is called to appear in court is to be paid a minimum of three hours or the actual time spent, whichever is greater.

This conciliator finds that comparables support the conclusion that a reduction in the current benefit from four to three hours is the more reasonable of the parties' final offers. The evidence shows that three hour minimum call-in and court time provisions are found in many neighboring jurisdictions. For example, the cities of Bay Village, Beachwood, Bedford and Brooklyn all provide three hours of minimum pay for call-in and court time. There are far fewer jurisdictions which provide for two hours of minimum pay for call-in and court time as proposed by the City herein. Therefore, comparables support the Union's amended proposal with respect to court time/call-in minimum pay.

Moreover, the City will achieve a certain amount of savings with respect to overtime costs from the reduction of court time/call-in minimum pay from the current four hours to three hours. It was shown that about 85% of all court time/call-in time paid in the police department is paid to officers in this bargaining unit mainly in the form of court time. As of July 25, 2004, employees in the police department reported 959 hours for Municipal Court and 375 hours for County Court time. Therefore, the reduction in the court time minimum pay from four to three hours should help the City achieve a significant amount of savings with respect to overtime in the police department.

A W A R D

With respect to Court Time/Call-In Time, this conciliator selects the Union's amended final offer as more fully set forth below:

COURT TIME/CALL-IN TIME

Section 21.3 An employee in an off duty status who is ordered to report for work and reports as requested, shall be paid a minimum of three (3) hours or the actual time worked, whichever is greater.

Section 21.4 An employee in an off duty status who must appear in court in reference to his official duties shall be paid a minimum of three (3) hours or the actual time spent, whichever is greater.

3. OVERTIME PAY

The Union proposes that overtime be reduced from eighty-six hours to eighty hours in a fourteen day period. The City proposes to maintain the current eighty-six hour provision for overtime pay.

The Union contends that its proposal on overtime pay is supported by the low wages paid to patrol officers. The Union notes that the ranking police officers in the East Cleveland Police Department under their new agreement provides that overtime is to be paid for hours worked over eighty hours on a fourteen day period. Likewise, the dispatcher unit calculates overtime for time worked over eighty hours in a fourteen day period. The Union submits that generally overtime is provided in most jurisdictions on the basis of hours worked over forty in a seven day period or eighty in a fourteen day period. The current eighty-six hour provision found in the patrol officers' Agreement is simply unjustified.

The City contends that it cannot afford to increase overtime costs at the current time given its fiscal emergency. It notes that the fact-finder recommended that the current eighty-six hour overtime provision be retained. It would be unreasonable to reduce the overtime threshold from eighty-six hours to eighty hours in a fourteen day period given the City's financial difficulties.

ANALYSIS – This conciliator has determined that the City's final offer with respect to overtime pay is to be awarded. This conciliator would agree with the fact-finder's determination that it would be unwise at the current time to add to the cost of

overtime for the City. As the fact-finder noted, in 2003 the police department paid \$225,000 in overtime. For the current year, the City has already exceeded the amount budgeted for overtime costs in the department. As discussed previously, the City has been in a State declared fiscal emergency for fifteen years. Recently, the City has had to undergo layoffs and large scale cutbacks. Given this backdrop, it becomes apparent that the City cannot afford to increase overtime costs at the current time. As a result, this conciliator does not find that it would be reasonable to adopt the Union's proposal which would reduce the overtime threshold from eighty-six to eighty hours in a fourteen day period.

A W A R D

With respect to Overtime, this conciliator selects the City's final offer as more fully set forth below:

OVERTIME – Maintain current contract language.

4. RESIDENCY

The Employer proposes that employees be required to become residents of the City within six months of ratification or hire. The Union's final offer is to maintain current language which bars the City from imposing a residency requirement as a condition or term of employment.

The Employer argues that there are several advantages in requiring employees to become residents of the City. It would not only increase income tax revenue as well as spending in the neighborhoods, but also enhance property values. Residing in the City of employment also tends to increase the dedication to one's occupation where the work is performed. The City points out that non-union and non-safety employees are required to be residents.

The Union cites the fact that none of the other safety forces are required to reside in the City. The Union's proposal merely maintains the status quo with respect to the current Residency Provision. The Union argues that the City cannot demonstrate any reason or justification for its position.

ANALYSIS – This conciliator has determined that the Union's residency proposal which retains current language is to be awarded. First, it should be noted that the fact-finder recommended there be no change in the current Residency Provision. Like the fact-finder, this conciliator finds merit in the Union's arguments regarding safety, hardship and the limitations of possible applicants. It is also significant that none of the other safety forces are required to maintain a residence in the City. This conciliator

finds that there simply was no justification established by the City for its residency proposal.

AWARD

With respect to Residency, this conciliator selects the Union's final proposal to retain current language as more fully set forth below:

RESIDENCY

Section 33.5 Maintain current language.

CONCLUSION

In conclusion, this conciliator hereby submits the above referred to awards on the outstanding issues presented to him for his consideration.

DECEMBER 27, 2004

James M. Mancini
JAMES M. MANCINI, CONCILIATOR