

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2004 OCT 15 P 12: 21

IN THE MATTER OF CONCILIATION
PROCEEDINGS BETWEEN:

FRATERNAL ORDER OF POLICE,
SCIOTO LODGE NO. 33,
Employee Organization,
and

CITY OF PORTSMOUTH,
Employer.

CONCILIATION AWARD

CASE NUMBERS:

03-MED-10-1245
03-MED-10-1246

DATE OF HEARING: September 8, 2004

PLACE OF HEARING: Portsmouth, Ohio

CONCILIATOR: Charles W. Kohler

APPEARANCES:

For the Employee Organization:

Henry A. Arnett, Esq.
Livorno and Arnett
280 N. High Street, Suite 1410
Columbus, Ohio 43215

For the Employer:

Marc A. Fishel, Esq.
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PROCEDURAL BACKGROUND

On May 11, 2004, the State Employment Relations Board ("SERB") appointed the undersigned as Conciliator pursuant to Ohio Revised Code Section 4117.14(D)(1). A hearing was held on September 3, 2004, in Portsmouth, Ohio.

This matter involves a wage re-opener for 2004 between the City of Portsmouth ("City") and the Fraternal Order of Police, Scioto Lodge No. 33 ("Union"), for a bargaining unit consisting of police officers, sergeants, lieutenants and one captain in the police department. The wage re-opener is contained in the January 1, 2003, to December 31, 2005, collective bargaining agreement between the City and the Union.

A fact-finding hearing was held on April 2, 2004, before Marcus Hart Sandver. He recommended a wage increase of 3.5 percent for 2004. His recommendation was rejected by the City, and the matter proceeded to conciliation pursuant to Ohio Revised Code Section 4117.14.

Section 4117.14 of the Ohio Revised Code provides that the Conciliator must resolve the dispute by selecting, on an issue-by-issue basis, from each of the party's final settlement offers, taking into consideration the following:

- (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, 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 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.

The Conciliator has considered all reliable evidence presented to him with respect to the issues at impasse. The Conciliator, after carefully reviewing all of the relevant evidence, together with the arguments of the parties, hereby submits his findings, opinion, and award.

POSITIONS OF THE PARTIES

Position of the City

The City asks the Conciliator to accept its proposal for a wage increase in 2004. It maintains that the City does not have the financial ability to fund a 3.5 percent pay increase. The City asserts that Portsmouth is in an extremely precarious financial condition, primarily due to unfavorable economic conditions in Scioto County. It points out that other cities of comparable size collect 8.8 million dollars in municipal income taxes, while Portsmouth collects only 5.5 million dollars. It points out that the federal adjusted gross income in the Portsmouth City School District is \$4,000.00 less than school districts in similar-sized cities in Ohio. It also notes that Scioto County has an unemployment rate of 8.5 percent, which is among the highest in the State of Ohio.

The City takes issue with the fact-finder's conclusion that the City had the ability to pay for a 3.5 percent wage increase based on a \$140,000 savings resulting from the reduction of health insurance premiums for 2004. The City asserts that the actual savings to the general fund

from the reduction in health insurance premiums was \$72,722. The City contends that this decrease is partially offset by an increase in liability insurance premiums of \$43,276.

The City notes that the City Charter requires a minimum of 43 police officers in the City. With the recent hiring of two police officers, the police department is at its minimum staffing level. No cost savings can be obtained by a reduction in the number of police officers absent an amendment to the City Charter.

Position of the Union

The Union proposes that the Conciliator award a 3.5 percent wage increase for 2004. The Union notes the bargaining unit received no wage increase in 2003. The Union asserts that, without a pay increase for two consecutive years, police officers will lose ground with officers in comparable jurisdictions. The Union maintains that the average wage increase for Ohio cities was 3.7 percent in both 2003 and thus far in 2004.

The Union asserts that, in a group of cities which were previously used by the employer's consultant in a compensation study, the average wage increase for police officers in 2003 was 3.58 percent. Thus far in 2004, these cities had an average wage increase of 3.5 percent

The Union asserts that, over the years, the workload of a police officer has increased. While serious illegal drug use was uncommon 24 years ago, the City currently has significant problems from drug dealers from larger cities selling drugs. There have been drive-by shootings and drug related homicides in the City. In 1980, the number of calls per year was approximately 30,000. Currently, there are 34,000 – 36,000 calls per year. Paradoxically, there were more police officers employed in 1980 than are currently employed. Currently, staffing is at its lowest level since 1998.

DISCUSSION AND CONCLUSIONS

Financial Condition of the City

The most important source of funds for the City is a municipal income tax of 1.4 percent. Of the 1.4 percent tax, .4 percent is required to be used exclusively for the operation of the police and fire departments, because the .4 percent tax was approved by the electorate for this purpose. The .4 percent tax raises approximately 1.5 million dollars for the City. However, annual expenditures for the police and fire departments are approximately 5.9 million dollars.

Prior to each fiscal year, the City Auditor prepares a budget which is presented to City Council. For 2004, the Auditor recommended a budget with estimated revenue of nine million dollars. However, Council did not accept the recommendation, and approved a budget which estimated revenues at \$9,909,189. The budget included expenditures of \$9,892,395. At this time, the Auditor is estimating 2004 revenues of approximately 9.26 million dollars.

The Auditor prepared a memo to Council dated August 3, 2004, in which he projects a deficit of \$644,285 for 2004. He stated in the memo that "It is imperative to find ways immediately to reduce expenses through the rest of this year to reduce the deficit by year-end."

The City also had a large budget deficit going into the final months of 2003. In order to provide additional operating funds, the City requested that money from the Capital Improvements Fund (CIP) fund be transferred into the general fund. The payment of a certain part of income tax revenue into the CIP fund is required by the City Charter. In order to make this transfer, the City had to obtain approval from the Scioto County Common Pleas Court pursuant to ORC 5705.14. The City received permission from the Court, and a transfer of \$949,735.00 was transferred from the CIP fund to the general fund.

The transfer resulted in the City having a surplus of approximately \$4,000 at the end of 2003. The Auditor estimates that the City should have a carry over of at least \$500,000.00. According to the Auditor, it is essential that the City have a sufficient carry over at year end to fund the first payroll in January. Tax revenue does not provide enough revenue in January to pay the first January payroll due to the timing of the receipt of revenues.

As of July 31, 2004, there was an unencumbered balance of \$284,591.00 in the CIP fund. With court permission, these funds could be transferred into the general fund. However, regular transfers of capital improvement dollars into the general fund would be contrary to the City Charter. In addition, these funds would be unavailable for necessary capital improvements. The City believes that, based on discussions with the judge during the 2003 transfer of CIP funds, the judge would be hesitant to approve a transfer two years in a row. Significantly, even if a transfer of CIP funds was approved by the Court, the City would still have a deficit of \$360,000 for 2004.

Wage Comparability

The Conciliator feels that the most appropriate cities for comparison purposes are Chillicothe, Steubenville, and Zanesville. The Conciliator notes that Chillicothe, Steubenville and Zanesville, as well as Portsmouth, are all located in the Appalachian region of Ohio. According to a finance study which was prepared with the assistance of Ohio University, these cities have economic challenges due to the region in which they are located. The finance study found that municipalities in the Appalachian region of Ohio “face challenges similar to the City of Portsmouth when recruiting, retaining and rewarding police, fire and city service personnel.”

Currently, the starting wage for a Portsmouth police officer is \$24,294. The average starting salary in Chillicothe, Steubenville, and Zanesville is \$29,352.00. The top wage for a Portsmouth police officer is \$35,422. The average top salary in the comparable cities is \$39,370.

However, police wages in Portsmouth are enhanced by the 8 percent retirement pick-up and employer paid health insurance. The pick-up has the effect of increasing the salary by 8 percent. Adding 8 percent to the starting salary increases the salary by \$1943.52, for a total salary of \$26, 237.52. Adding 8 percent to the top salary increases the salary by \$2833.76, for a total of \$38,255.76. Portsmouth police officers also receive fully paid health insurance. The cost to the City for one year of family coverage for one employee is \$10,393.80.

Conclusions

ORC Section 4117.14 provides that the Conciliator must take certain factors into consideration. One of the factors which the Conciliator must consider is the ability of the public employer to finance a proposal. In addition, there are other factors which must be considered, such as comparability with other employees doing similar work, the interest and welfare of the public, and the past collective bargaining agreements of the parties. The Conciliator has weighed all of these factors in reaching his decision.

The current collective bargaining agreement includes a wage re-opener for both 2004 and 2005. The prior collective bargaining agreement included a wage increase of 5 percent during each year of the agreement. Bargaining unit employees thus received a wage increase of 5 percent during each of the years 2000, 2001, and 2002. The bargaining unit agreed to a zero percent wage increase for 2003.

For many years, fire fighters and police officers have received the same wage increase . The fire fighters also received a 5 percent wage increase in 2000, 2001, and 2002. The fire fighters agreed to a zero percent increase for 2003. Fire fighters have already agreed to a zero percent wage increase for 2004. Thus, if the Conciliator awards a 3.5 percent increase to the police officers, there will be a large disparity between the wage increases for employees of the two departments in 2004.

The wage increases received by police officers in the years 1998 – 2002 were substantially above the inflation rate. For example, in 1998, the inflation rate was 1.5 percent and the wage increase was 3 percent. In 2002, the wage increase was 5 percent and the inflation rate was 1.58 percent. In 2003, the bargaining unit received no wage increase to offset the inflation rate of 2.28 percent. The sum of the inflation rates from 1998 through 2003 is 13.8 percent. The sum of the wage increases for those six years is 21 percent (including the zero percent wage increase in 2003). This shows that, roughly speaking, the police officers received total wage increases which were 7 percent greater than inflation over the six years.

Under the current collective bargaining agreement, all bargaining unit members are provided with single or family health insurance at no cost. The premium for the City for family health insurance for 2004 is \$866.15 per employee. The rate for single coverage is \$317.07. The premium for 2005 is unknown at this time, however, by the terms of the agreement, the City is required to absorb the entire cost of any increase. While there was a decrease in 2004 from the 2003 family premium of \$909.85, the clear trend is for premium rates to increase each year.

Considering the wages paid in comparable cities, the wage increase requested by the Union is reasonable. However, comparative data cannot be considered in a vacuum. It must be evaluated in light of general economic conditions, and the financial ability of the paying entity. When the City's financial condition was healthy in prior years, the police officers benefitted by receiving wage increases which were substantially above the inflation rate. Just as favorable economic conditions work to the benefit of the police officers, poor economic conditions work to their detriment.

The financial condition of the City is not healthy. The State Auditor's report for 2003 states that continued negative financial conditions could lead to a fiscal watch/emergency in the City. At this time, the projected budget deficit for 2004 is \$644,285. Due to its financial problems, the City has not given pay raises to any City employees in 2004. To avoid a deficit at year end, the City will have to make further cuts in expenditures. A wage increase of 3.5 percent for the bargaining unit in 2004 would add \$72,436 to the deficit, requiring even deeper cuts.

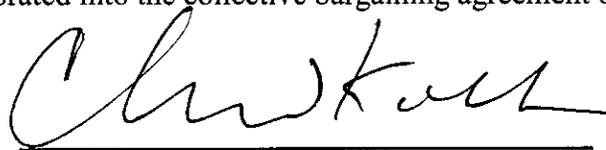
The evidence shows that the current condition is primarily the result of the unfavorable economic conditions in the City and surrounding area. The City has presented sufficient evidence to convince the Conciliator that it is not financially able to fund a wage increase of 3.5 percent for 2004. A wage increase of 3.5 percent would be fiscally irresponsible, and would not be in the best interest of the public. Therefore, the Conciliator will adopt the proposal of the City.

Award

The Conciliator directs the adoption of the proposal of the City for a wage freeze for 2004.

CONCLUSION

The Conciliator submits his decision with respect to the outstanding issue, and orders that the award be incorporated into the collective bargaining agreement of the parties.

A handwritten signature in black ink, appearing to read 'Charles W. Kohler', written over a horizontal line.

Charles W. Kohler, Conciliator

CERTIFICATE OF SERVICE

I do hereby certify that, on October 14, 2004, a copy of the foregoing Conciliation Award was served upon the representatives of the parties at the addresses shown on the title page of this Award; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.

A handwritten signature in black ink, appearing to read "Charles W. Kohler", written in a cursive style. The signature is positioned above a horizontal line.

Charles W. Kohler, Conciliator