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STATE EMPLOYMENT
RELATIONS BOARD

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STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION AWARD

May 16, 2005

In the Matter of:

Local Organized Governments)	
in Cooperation (LOGIC))	
)	
and)	
)	
Fraternal Order of Police)	
Ohio Labor Council, Inc.)	

Case No. 04-MED-09-0867
Dispatchers

APPEARANCES

For the Employer:

Nicholas Codrea, Jr., Law Firm of Robert J. Tscholl
Greg Browning, Director
Mark Busto, Assistant Director

For the Union:

Rick Grochowski, FOP Staff Representative
Bob Buhecker, Union Representative

Conciliator:

Nels E. Nelson

BACKGROUND

The instant case involves Local Organized Governments in Cooperation and the Fraternal Order of Police, Ohio Labor Council, Inc. LOGIC provides dispatching services to 14 jurisdictions in Stark County. The Fraternal Order of Police, Ohio Labor Council, Inc., represents the 15 full-time dispatchers. LOGIC employs a number of part-time dispatchers who are not represented.

LOGIC and the union began negotiations in October 2004 for a successor contract to the one due to expire December 31, 2004. When no agreement was reached, the parties selected the State Employment Relations Board appointed Robert Stein as the Factfinder. He conducted a hearing on January 10, 2005, and issued his report on February 8, 2005. His report was accepted by LOGIC but was rejected by the union.

The Conciliator was appointed on March 3, 2005. Pre-hearing statements were submitted by the parties on March 18, 2005. The conciliation hearing was held on April 4, 2005.

The Conciliator is required to select the offer of one party or the other without modification. The selection between the final offers 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 presented four 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 positions. The Conciliator will then provide his analysis of the issue and present his award.

1) Article 14 – Seniority, Section 14.5 – Desk Assignments (New Provision) - The current contract has no provision regarding desk assignments. The union proposes that employees be allowed to choose their desk assignment based on seniority. The employer opposes the union’s demand.

Union Position – The union argues that its demand is justified. It points out that there are four assignments – three for police and one for fire dispatching. The union notes that some employees have been trained to work either desk but others have not sought or have not been given the training for both assignments. It complains that the result is that senior employees sometimes are forced to work a desk that they view as less desirable because less senior employees are unable to work both desks.

The union acknowledges that the Factfinder denied its demand. It observes, however, that he suggested that “the parties meet and confer on the issue of training.”

Employer Position – The employer opposes that union’s demand. It reports that only 10 of 15 dispatchers can do both jobs so that bidding might result in employees being placed in jobs that they could not do. The employer insists that the union’s proposal is unworkable.

The employer also relies on the fact that the Factfinder recommended its position. It argues that Conciliation “is and has become an appellate process.” (Employer Position Statement, page 3) The employer contends that the burden of proof is on the party that disagrees with the Factfinder’s recommendation and that “the disagreeing party must prove an error in the Factfinder’s analysis or that the Factfinder’s report is without reason.” (Ibid.) It insists that a “conciliator should not overturn a Factfinder’s recommendation simply because he disagrees with it or he himself would have come to a different conclusion.” (Ibid.)

The employer cites two decisions of Dennis Bryne in support of this contention. In City of Lakewood and IAFF Local 381, Case No. 00-MED-09-0952, May 1, 2002, he stated:

In practical terms a party that disagrees with the Fact Finder’s recommendations must accept the burden of proving that the Fact Finder erred. In addition it must also be proved that the error is of sufficient magnitude that the Fact Finder’s recommendation is unreasonable, not just unpopular. Therefore, in some ways the conciliator is faced with a two prong test. First, did the Fact Finder make a mistake? If the answer to that question is in the affirmative, then the second question is whether the mistake is of sufficient magnitude that the conciliator must negate the Fact Finder’s recommendation. It is possible to prove that the Fact Finder made a mistake of sufficient magnitude to necessitate a conciliator making a different recommendation on an issue; but it must be an unusual occurrence if the integrity of the fact finding/conciliation process is to be maintained.” (Page 4)

In City of Parma and IAFF Local 639, Case No. 02-MED-03-0171, July 23, 2003,

Conciliator Byrne indicated:

Therefore, in general, a party cannot come to conciliation with essentially the same positions, the same evidence and arguments, and expect a Conciliator to overturn the Fact Finder's recommendations. The party that disagrees with the Fact Finder's report has to prove that the Fact Finder made a mistake in his/her analysis, made an unreasonable recommendation, etc. Many Conciliators have come to believe that there must be some reason, besides the fact that one or the other of parties to a dispute disagrees with the fact finding report, to recommend a different outcome than the one given by the Fact Finder. (Page 4)

Analysis – The Conciliator must select the employer's final offer.

If he were to award the union's demand, some employees would likely be placed in positions where they could not adequately perform the job. The result would be a reduction in the quality of the critical task of dispatching police and fire assistance and perhaps employees being disciplined for poor work performance. However, it would appear to be an advantage to both employees and the employer to have all employees trained to work in both assignments.

While the Conciliator's award is consistent with the recommendation of the Factfinder, he must reject the employer's contention that a Conciliator simply sits in review of the Factfinder. There is nothing in the statute to suggest that conciliation was intended to be nothing more than a review of the Factfinder's recommendations. Furthermore, the criteria and procedures for conciliation contained in Chapter 4117 of the Ohio Revised Code imply that the parties are entitled to have the Conciliator take an independent look at the issues they have submitted.

The Conciliator believes that the effect of a Factfinder's recommendations on a Conciliator's award is a matter of the proper weight to attach to them. The proper weight depends on many factors, including the experience and expertise of the Factfinder, the

persuasiveness of the report, and the quality of the parties' representation at the factfinding.

Award – The Conciliator denies the union's demand for a new contract provision.

2) Article 17, Section 17.1 - Wages - The current contract establishes a starting wage of \$25,195 for dispatchers which increases to \$30,700 after one year; a wage of \$32,573 for supervisors; and a wage of \$32,780 for technical coordinators. The union demands increases in wages of 2% in 2005, 3% in 2006, and 4% in 2007. The employer offers increases of 0%, 2%, and 3%.

Union Position – The union contends that comparable salaries support its demand. It reports that SERB benchmark data from October 24, 2004, for 142 employers indicates that safety dispatchers are paid an average entry wage of \$28,092 and a maximum of \$35,022. The union stresses that this means that the entry wage for LOGIC is \$3000 less than the average for Ohio and the maximum is nearly \$5000 lower.

The union maintains that the increases received by other public employees support its position. It observes that police in Massillon received 3.5% wage increases in 2004 and 2005 and Lawrence Township got 4.5% increases in the same years.

The union also relies on the SERB Quarterly for the first quarter of 2004. It reports that SERB indicates that public employees in Ohio have received annual wage increases ranging from 3.16% to 3.78% during the past ten years.

Employer Position – The employer contends that comparisons to employers in the region support its position. It states that the minimum and maximum

total compensation, including wages, longevity, and shift differential, for dispatchers in Stark County, excluding Canton, averages \$12.27 and \$15.72 compared to its minimum wage of \$12.38 and maximum of \$15.87.

The employer claims that recent increases in wages in the area also support its position. It acknowledges that the Massillon police got 3.5% wage increases but stresses that some police were laid off. The employer notes that the police in Jackson got no wage increase in wages in 2005.

The employer contends that it can only offer its proposed increase of 5% over three years. It states that it is 2% to 2.5% over its budget this year and asserts that even with its proposed wage increases, it will be lucky to break even. The employer adds that it faces competition for dispatching work from the nonunion Nimishillen Fire Department

Analysis – The Conciliator must award the employer’s final offer. The record suggests that while the employer’s offer is less than increases in some other jurisdictions, it is all it can afford to pay. This situation appears to have been created in part by the employer having to absorb increases in the cost of health insurance.

The Conciliator’s choice of the employer’s final offer is supported by the conclusion reached by the Factfinder. In factfinding the employer offered increases of 0%, 2%, and 2% while the union sought increases of 4% in each year of the contract. The Factfinder indicated that the employer’s position for the third year was too low and recommended the employer’s position but with a 3% increase in the third year. In conciliation, the employer adopted the recommendation of the Factfinder as its final offer.

Award – The Conciliator selects the employer’s final offer that the wages shown in Article 17, Section 17.1, be increased by 2% effective January 1, 2006, and 3% effective January 1, 2007.

3) Article 31, Section 31.1 – Uniform Allowance - The current contract provides for an annual uniform allowance of \$225. The union seeks to increase the allowance to \$235 in 2005, \$245 in 2006, and \$255 in 2007. The employer proposes increasing the uniform allowance to \$240 effective on January 1, 2005, and retaining the allowance at that level for the balance of the agreement.

Union Position – The union argues that its final offer was recommended by the Factfinder and ought to be selected by the Conciliator.

Employer Position – The employer contends that its offer ought to be adopted. It indicates that it is not opposed to an increase in the uniform allowance but maintains that it should be set as an average increase instead of annual increases.

Analysis – The Conciliator must choose the union’s final offer. The union is seeking little more than an increase that reflects rising prices. The Conciliator agrees with the Factfinder that the increases sought by the union are appropriate.

Award – The Conciliator selects the union’s final offer. It is as follows:

All employees shall receive an annual uniform allowance credit in the amount of two hundred thirty-five dollars (\$235) in the first year of the Agreement, two hundred forty-five dollars (\$245) in the second year of the Agreement, and two hundred fifty-five dollars (\$255) in the third year of the Agreement. (The remainder of the language is the same as the current contract.)

4) Article 32 – Health Insurance - The current contract requires the employer to continue to provide the hospitalization, dental, vision, and prescription insurance in force in 2002 and to pay the full cost of the insurance provided. The employer seeks a few changes. First, it demands that effective January 1, 2006, employees pay one-half of any increase in premiums in excess of 6%. Second, the employer wants the option to change carriers provided it maintains equivalent coverage. Finally, the employer promises to establish a Section 125 plan so employees can pay health insurance premiums with pre-tax dollars. The union seeks to retain the current contract language.

Union Position – The union objects to the employer’s proposal. It charges that the employer is seeking major changes which are not justified. The union claims that a fifty-fifty split of premium increases with no cap has never been adopted in the public sector. It asserts that with only a 2% wage increase in 2006, employees will suffer a loss in income.

The union contends that health insurance programs in comparable jurisdictions support its position. It points out that Lawrence Township provides employees with fully paid health insurance. The union claims that police officers in Massillon, who earn \$50,000, have \$300 co-pays and \$200 deductibles while the employer is demanding much larger amounts.

Employer Position – The employer states that it takes “great exception to the [health insurance] issue being introduced.” It claims that at the start of bargaining it got information on every possible health insurance plan. The employer states that at the union’s insistence it is retaining the Hometown Insurance Group Standard HMO Plan,

which includes a lot of first dollar coverage. It claims that this necessitates employee contributions.

The employer insists that employees will only be required to make a small premium contribution. It indicates that if premiums increase by 12.4%, the amount by which HMO premiums went up in 2004, employees will have to pay only 3.2%, i.e., 12.4% minus 6% divided by two. The employer stresses that both private and public sector employees are increasing deductibles and requiring premium contribution by employees.

The employer reports that the Factfinder recommended its position.

Analysis – The Conciliator must award the employer’s final offer for health insurance. In recent years, fully paid health insurance plans that offer reasonable coverage, deductibles, and co-pays have become uncommon because of escalating health care costs. This fact is clearly supported by SERB’s Annual Report on the Cost of Health Insurance in the Ohio Public Sector. Furthermore, the requirement for employees to pay a share of increases in the cost of premiums beginning on January 1, 2006, is not likely to result in significant employee contributions.

Award – The Conciliator selects the employer’s final offer. It is as follows:

Section 32.1 Effective January 1, 2005, Bargaining Unit Members shall be provided with hospitalization, dental, vision and prescription drug coverage under the Hometown Insurance Group Standard HMO Plan. An outline of the plan’s coverages are attached to this Agreement as Appendix A.

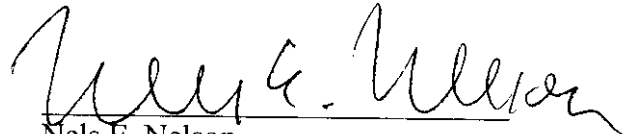
Section 32.2 During the course of this Agreement the Employer may change providers and/or Plans Administrator but will maintain equivalent coverage(s).

Section 32.3 Effective January 1, 2006, any annual increases in the Employer's premium and/or COBRA rate in excess of 6% shall be shared on a 50%/50% basis by the Employer and all Bargaining Unit Members.

Section 32.4 In the event employee contributions as referenced in Section 32.3 above become necessary the Employer will make deductions on a bi-weekly basis based on the Employee's dependency status. The Employer would agree to establish a Section 125 plan in order to make said deduction pre-tax.

5) Tentative Agreements – At the mutual request of the parties, the

Conciliator also awards the tentative agreements reached by them.



Nels E. Nelson
Conciliator

May 16, 2005
Russell Township
Geauga County, Ohio