

MEK

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF CONCILIATION

2008 FEB -6 A 10: 09

BETWEEN

FRATERNAL ORDER OF POLICE, OLC, INC.

AND

CITY OF EASTLAKE

**SERB CASE # 04-MED-10-1014, 1015, 1016
MAD**

ADVOCATE FOR THE UNION:

**Charles L. Wilson, Staff Representative
FRATERNAL ORDER OF POLICE, OLC, INC.
2721 Manchester Road
Akron OH 44319**

ADVOCATE FOR THE EMPLOYER:

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INTRODUCTION

The Fraternal Order of Police represents the bargaining unit (hereinafter "Union") and the Employer is the City of Eastlake (hereinafter "Employer", "City", or "Department"). The three (3) bargaining units involved in this case are comprised of employees of the Department who hold one of the following classifications: patrol officer, sergeant, lieutenant, or dispatcher. The parties have an established bargaining relationship. The safety forces in the city, fire fighters and police, are on a similar negotiations cycle. The fact finder for both the police units and the fire fighter's unit was the same. The fire fighters contract did not settle at fact finding, and a conciliation was required to settle the agreement. In the instant matter, the same sequence of events took place. A mediation/conciliation hearing was held on December 13, 2005 over the following unresolved issues:

Listing Of Unresolved Issue(s):

**Salary
Insurances and Mid-Term Bargaining Clause-New
Sick Leave Conversion
Discipline Procedure
Arbitration Procedure**

A hearing on this matter was scheduled and held in a timely fashion on December 13, 2005.

Prior to a formal submission of evidence the conciliator made a concerted effort to bridge the differences between the parties concerning the above referenced issues. Settlement possibilities were assessed with the parties in an effort to find common ground upon which to construct a settlement. Through the concerted efforts of the parties' advocates and with the assistance of the conciliator, the parties moved closer to one another's positions. However, complete agreement was unable to be achieved necessitating the convening of a hearing to formally address the remaining differences between the parties.

Both Advocates represented their respective parties well and clearly articulated the position of their clients on the issues in dispute. In order to expedite the issuance of this report, the Conciliator shall not restate the actual text of the parties' proposals on each issue, but will instead reference the Position Statement of each party along with a summary discussion.

CRITERIA

OHIO REVISED CODE 4117

In the finding of fact, the Ohio Revised Code, Section 4117.14 (G) (7) establishes the criteria to be considered for conciliators. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements, if any, between the parties;
2. Comparison of issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. 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;
4. The lawful authority of the public employer;
5. The stipulations of the parties;
6. Such 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, conciliation, or other impasse resolution procedures in the public service or in private employment.

These criteria provide the basis upon which the following recommendations are made: These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

DISCUSSION

These are uncertain times for Ohio public employers. Financial uncertainty continues to loom in northeastern Ohio, punctuated by periodic announcements of companies downsizing or moving their operations out of Ohio. Ohio is not the only state affected by these corporate downsizing moves; however, its past dependence upon manufacturing has left it particularly vulnerable. There continues to be a marked movement of manufacturing jobs out of the country and reluctance by companies remaining to restore manufacturing jobs even when the economy turns more favorable. During this same period the federal government is reducing aid to the states and, in turn, the states are reducing aid to municipalities and other local government entities.

As with all business there is a bottom line to watch, and the business of public government is no exception. It has been said that the keys to sound management are prudent stewardship of resources, fiscal responsibility, revenue growth, and maintaining quality employees. Northeast Ohio is very dependent upon the auto industry as a bellwether to its future. The U.S. auto industry has been carrying large inventories, and its market share has been eroded by a

variety of factors, including the success of foreign competition. During the week of January 23, 2006, Ford, in the wake of similar announcements made by General Motors in 2005, stated it will close more than a dozen manufacturing facilities and will layoff approximately 30,000 employees over the next few years. Fortunately, no plants in northeastern Ohio were included in this announcement. However, there is no way of predicting further moves by auto manufacturers or the ripple effect on Ohio's considerable auto parts supply base following such a change. The fate of Delphi, with a considerable presence in various locations in Ohio, still remains uncertain. These represent a few in the series of plant closings and job losses that have hit manufacturing in Ohio during recent years. Certainly, some Ohio-based employers are economically sound and are growing, yet it is not unreasonable to conclude that economic foul weather may be plaguing Ohio for the foreseeable future.

The economic impact of the aforementioned changes in the economy is disparate. Some states are in far better financial shape than is Ohio. For example, one only has to visit such locations as Nevada, Florida, or North Carolina to see the contrast in the directions of their economies versus Ohio's. There is also a disparate impact within Ohio. There are wide variances in the economic health of municipalities in Ohio. For example, the City of Columbus and Franklin County are considered stable economic areas and have fared far better than has northeastern Ohio. In contrast the City of Eastlake is struggling economically. The City is operating with a deficit and is in a state of fiscal

emergency. How and why this came about is a subject of considerable debate and for historians to determine. The focus of this conciliation must be the present and the future. Regardless of who is to blame, the reality is the City must take planned steps to recover from its current deficit situation. A state oversight committee assigned to the City requires such steps to be taken. Further exacerbating this situation are the expenditures required to pay the debt on the stadium, which increases from years 2006 to 2007. The total debt for the stadium is approximately twenty-six (26) million dollars. Approximately one-half of the service department employees were laid off in 2004, and further reductions have been made by attrition. In 2004 the safety bargaining units made significant sacrifices by accepting a freeze on wage increases. Again, I can appreciate the bargaining units' frustration with the current economic condition of the City. Yet they and the City have no choice but to take the necessary steps to preserve city services and bring about economic stability.

The Union proposes salary increases of 2.75% each year of the three (3) year Agreement. The fact-finder recommended 2.0% increases each year of the Agreement, which was also the position taken by this same fact-finder in the fire fighters' impasse proceeding. The conciliator in the fire fighter's impasse, concurring with the fact-finder, granted 2% increases each year of the fire fighters' three (3) contract. The fire fighters' contract extends over the same period of times as do the police contracts. In the police fact-finding report the fact-finder also recommended a 75 cents per hour increase for Dispatchers. The

City is offering the same 2% increase (.33 for 2005, and .34 per hour for 2006 and 2007) to dispatchers that it is offering to the other police bargaining units.

I concur with the findings of the neutral involved in both the police and fire fact-findings. Recognizing that the safety bargaining units made a considerable sacrifice in 2004 when they took no increase in pay, all parties recognize that the employees in the police units need a raise in pay. The fact-finder's recommended 2% increase, while below the average increase for public sector law enforcement officers in northeast Ohio, is realistic given the current poor financial position of the City. While the Union made a considerable argument for a .75 increase for Dispatchers, the conciliator is prohibited from considering it. Unlike fact-finding, the requirements placed upon a conciliation by law mandate that he must grant one party's position in its entirety. He does not have the option of selecting parts of each party's position in fashioning an award on a single issue.

With regard to health insurance, both parties are proposing the first part of the fact-finder's recommendations to impose an increase in the employee health care premium to eight percent (8%). It is certainly not unusual in Ohio for public and private sector employees to pay a portion of their health care coverage. The 8% figure is further supported by internal comparables of the fire fighter bargaining unit and the non-bargaining unit employees in the City. The 8% amount is still below what many other public sector entities have negotiated with their bargaining units. It is not unusual to find that public sector employees

pay 10% or often more of their insurance premiums. The difference between the parties' positions is the imposition of a cap on amount an employee would pay over the life of the agreement. For purposes of economy of scale, the health care plan(s) in cities the size of Eastlake must be the same. Therefore, there is an emphasis on parity for employees who for practical reasons have the same plan. While agreeing with the fact-finder on the amount of the employee premium (8%) and its January 1, 2006 effective date, the conciliator did not accept the fact-finder's position on monthly insurance caps.

The issue of internal equity and parity regarding health care is an important factor in determining matters of this nature. Moreover, I concur with the notion proffered by the fire fighter conciliator that mid-term bargaining during the remaining months of the agreement is impractical. However, the health care coverage costs and coverage are too volatile to be left unmonitored until the next contract is negotiated. During the mediation phase of conciliation the parties agreed to have greater bargaining unit participation in the management of health care through the formation of a health care committee. This popular concept has allowed public employees and employers to better understand and manage health care costs and benefits. For reasons stated above, it is far more stable from a labor relations perspective to treat all employees of a municipality alike with regard to a shared benefit. The conciliator in the fire fighter's agreement left the employee share of the premium uncapped. Therefore, it is not reasonable, particularly among safety

force-units, to treat some organized safety force units differently than others. It is also hoped that an active employee/employer health care committee can better manage the costs of health care during the last two years of the next agreement.

A sick leave conversion, like health care coverage, is also a benefit that cuts across all employees in a city. It is commonplace for unions in a city, who represent different employees, to compare themselves with one another regarding the issue of sick leave conversion. Unlike benefits tailored to certain types of occupations or duties (e.g. tool allowances for mechanics), this benefit is commonly configured and administrated uniformly for all employees in a public entity. Moreover, public employees in a municipality generally accumulate sick leave accumulation at the same rate and conform to similar administrative procedures in its use. Conversion is no different. The City introduced convincing evidence and unrefuted testimony into the record to suggest that during the last round of negotiations the sick leave conversion rate was substantially enriched by the City on questionable and self-serving grounds. This resulted in the City assuming a dramatically increased financial liability in the face of its looming fiscal crisis.

Normally a party to a collective bargaining agreement is expected to assume full liability for its actions. However, the current fiscal situation of the City creates circumstances that are anything but normal. The conciliator for the fire fighters disagreed with the recommendations of the fact-finder who in essence

left this benefit intact but for removal of the resignation language and an extended payout scheme. Finding the fact-finder's recommendation not to be viable and flawed, she awarded a reduction in this benefit based in part on the fact that the 75% reimbursement "is more generous than most jurisdictions and is, therefore, still competitive." Given the extreme financial circumstances currently faced by the City and its bargaining units, this matter is viewed as a choice between modifying an uncommonly substantial benefit for employees who leave the City and the provision of more funds that may be allocated to maintain the employment and services of those who remain. Under these unique circumstances, I find the City's position to be persuasive.

Regarding the issues of discipline and arbitration, the position of the Union is more persuasive than that proposed by the City. The language of the current disciplinary procedure is awkward and misleading. The Union's proposed changes help to clarify Article 38.02's intent. With regard to the arbitration provision, the changes proposed by the Union are supported by the fact-finder's analysis. The current provision provides for both a permanent panel and the FMCS, which according to the fact finder "...makes no sense." I concur with the fact finder on this issue and with the Union's position.

This balancing act of providing quality services, while prudently managing public funds, places considerable pressure upon city officials and the very employees a city police department must rely upon to provide quality services. Quality services require quality employees, and in order to retain and recruit

good employees they must be compensated fairly consistently within the context of what is financially doable. After carefully considering the facts and evidence presented in this case, the following determinations are made in relationship to the issues at impasse.

Issue 1	Salary
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Determination:

The position of the City is adopted

Issue 2	Insurance/Mid-term Bargaining
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Determination:

The position of the City is adopted

Issue 3	Sick Leave Conversion
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Determination:

The position of the City is adopted.

Issue 4

Disciplinary Procedure

Determination:

The position of the Union is adopted.

Issue 5

Arbitration Procedure

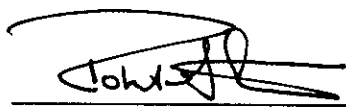
Determination:

The position of the Union is adopted, which shall also include Daniel Kosanovich, Esq. as the 5th panel member.

TENTATIVE AGREEMENT

During negotiations the parties reached tentative agreement on several issues. These tentative agreements are part of the recommendations contained in this report.

The Conciliator respectfully submits the above recommendations to the parties this 1st day of February 2006 in Portage County, Ohio.



Robert G. Stein, Conciliator