



STATE EMPLOYMENT
RELATIONS BOARD
2006 MAR -6 A 9:50

**OHIO STATE EMPLOYMENT RELATIONS BOARD
CONCILIATION REPORT
MARCH 2, 2006**

**OHIO PATROLMAN BENEVOLENT)
ASSOCIATION)
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Union)
)
-and-)
)
)
CITY OF WARRENSVILLE HTS. OHIO)
)
)
Employer)**

CASE NO. 04 MED-10-1082

APPEARANCES FOR THE UNION:

S. Randall Weltman, Attorney
Jerome Thomas
Dan Cogwin, Director, OPBA
James Thompson, Director, OPBA

APPEARANCES FOR THE EMPLOYER:

Rhonda S. Ferguson, Asst. Law Director
Frank Bova, Chief of Police
Honorable Marcia L. Fudge, Mayor of Warrensville Hts.

CONCILIATOR:

JOSEPH W. GARDNER, Reg. No. 0033400
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INTRODUCTION

The City is a Northeastern Ohio community near Cleveland, Ohio with a population of approximately 15,000. The City describes its population as “middle/working class.” The Union describes the City as primarily a residential community possessing a thriving and engaging business community.

The bargaining unit (Union) consists of approximately 25 police patrol officers.

The parties have, on at least four occasions, been involved in SERB’s process of resolving disputes during contract negotiations. The parties and witnesses are courteous and well informed; the representatives are professional and well prepared. However, the division and differences of the parties are serious.

During the proceedings, and in the preparation of this conciliation, the undersigned considered all of the following factors pursuant to Ohio Revised Code §4117.14:

- (a) **Past Bargaining Agreements, if any, between the parties;**
- (b) **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 employees doing in comparable work, giving consideration to factors peculiar to the area and classification involved;**
- (c) **The interest in 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 standards 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 undersigned considered the fact finding report in this case. Said report was made an exhibit and introduced into evidence.

STATEMENT OF CASE

This conciliation involves the Police Patrol Officers represented by the Ohio Patrolmen's Benevolent Association (the "OPBA" or the "Union") and the City of Warrensville Heights, Ohio (the "City").

The previous collective bargaining agreement (the "CBA") between the City and the OPBA was a three year contract expiring December 31, 2004. The fact finding hearing was set by agreement of the parties and held on November 16, 2005. Fact finding Report, Page 2. The parties advised the fact finder that they had a retroactivity agreement. Fact finding Report, page 3.

At the fact finding conference, the City did not assert an inability to pay as a basis for any of the economic issues but the City asserted that its positions are based on sound, conservative fiscal management of the City's finances. Fact finding Report, page 3.

A fact finding report was issued on November 30, 2005. The Union rejected the fact finding report on December 7, 2005 and a certification of this vote was sent to the City on December 7, 2006.

On December 12, 2005, the State Employees Relations Board published a notice that the Union rejected the fact finding report. A day later the City notified the Union's attorney that the OPBA did not have an applicable extension and retroactivity agreement in place. The City, in its notice to the OPBA, stated that "any conciliation award will be subject to limitation provided in the Ohio Revised Code §4117.14(G)(11):

"(11) Increases in the rates of compensation and other matters with cost implications awarded by the conciliator may be effective only

at the start of the fiscal year next commencing after the date of the fiscal offer settlement award; provided that is a new fiscal year has commenced since the issuance of the board order to submit to a final offer settlement procedure, the award increases may be retroactive to the commencement of the new fiscal year. The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement."

There was an "Extension and Retroactivity Agreement," a copy of which is attached. Both parties signed the agreement on December 1, 2004.

On December 28, 2005, SERB appointed the undersigned as the conciliator and directed the undersigned to schedule a hearing within thirty days of December 10, 2005. The parties agreed and the conciliation conference was set at City Hall Chambers on January 31, 2006. Both parties submitted timely position statements that set forth all issues described in ORC §4117.14(G)(3). Both parties produced and introduced evidence, both by testimony and exhibits, on an issue by issue basis. Both parties advanced arguments, counterarguments and rebuttal on each issue.

After the issues of compensation and health insurance were covered, the City amended all of the rest of the proposals to be the recommendations of the fact finder. In other words, the last and best offer of the City for all issues other than compensation and health insurance are the recommendations of the fact finder.

In reaching this conciliation report, the undersigned took into account all of the factors set forth in ORC §4117.14 and the provisions of the fact finding report.

RETROACTIVITY

The City argues that the prior CBA expired on December 31, 2004, and that the "extension and retroactivity agreement" expired on January 14, 2005. Since there have been no

further agreements, increases in rates of compensation and other matters with cost implications are permitted to be effective only to January 1, 2006.

The Union states that all matters scheduled in this case have been timely done and that the parties “initiated the process of fact finding” well before January 14, 2005. The “Extension and Retroactivity Agreement” also contains the following clause:

“Employer agrees to waive all limitations on the Conciliator’s powers as provided in ORC §4117.14(G)(11), and agrees that the rates in compensation and other matters with cost implications awarded by the Conciliator may be effective in the 2005 calendar year and thereafter.”

In spite of this apparent agreement by the parties to permit retroactivity to January 1, 2005, the City demands that retroactivity be limited to January 1, 2006.

The Union’s wage demand is a raise in rates of pay as follows: zero percent commencing January 1, 2005, eight percent commencing January 1, 2006 and four percent commencing January 1, 2007. The Union also seeks a bonus in the amount of four percent of the employee’s gross wages for the year 2005 to be paid no later than 60 days following the issuance of the Conciliator’s report. The City’s proposal for wages is: Effective January 1, 2006, 4% and effective January 1, 2007, 4%.

The City labels the Union’s demand for new wages as a “sham” to obtain retroactivity pay to January 1, 2005. The City argues that the City’s claimed prohibition of retroactivity also prohibits bonuses payable in 2006 and based on a pay rate of 2005.

The way the Union’s demand is written, there is no demand retroactive to January 1, 2005. There has been no evidence that the police officers will receive any increases in wages retroactive to January 1, 2005. There is nothing in the Union’s demand requesting retroactivity

to January 1, 2005. The undersigned is unaware of any limitation on the payment of bonuses which are paid in 2006.

The Union's demand as written for a bonus payable within 60 days of this Conciliator's report does not violate the law and rules of retroactivity nor does it violate the agreement of the parties. Retroactivity is not an issue that this conciliator must decide.

ISSUE NO. 1-COMPENSATION

DISCUSSION

The Union states that the parties have been unable to agree since 1996 on a contract. It has been the goal of the Union to equalize its pay with other comparable employers. In 1996 the fact finder stated that “there is no doubt that the police in Warrensville Heights are paid less than their counterparts in the southeast part of Cuyahoga County. No justification exists for this discrepancy.: Case No.: 96 MED-09-0752, Page 14. “Examination of the general wage increases made in the southeast section of Cuyahoga County for 1995 show Warrensville Heights police receive the smallest wage increase in the area.” *Id*, Page 15.

In reviewing the Conciliation Report under Case No.: 96 MED-09-0752, the Conciliator found that the wage increase as proposed by the Union were reasonable considering the wage rates for this bargaining unit were significantly lower than the wages paid to similar situated employees in neighboring cities. “The evidence shows that Warrensville Heights police wages fall in the lower end of the pay ranges for the police in the area.” *Id*, Case No.: 96 MED-09-0752, Page 16.

Under Case No.: 01 MED-10-0904, the fact finder found that this bargaining unit’s wage rate is lower than average by approximately 3.66%. *Id*, Page 12. That fact finder would have recommended a larger wage increase had Warrensville Heights still not had the problems of a huge deficit. *Id*, Page 13.

In a comparable City, to wit: the City of Lyndhurst, Case No.: 00 MED-10-1190, that fact finder ordered increases of 4% per year in order to preserve the position of Lyndhurst’s patrol officers. It appears from the evidence that the officers in this bargaining unit have, for the past 10 years, been attempting to obtain a wage rate that is an average comparison to other

comparable cities. In reviewing the contiguous cities, Union Exhibit 7, the Union would need a 3.13% pay increase simply to maintain the average top rate of pay.

Under Union Exhibit 8, comparing the east side suburbs, Warrensville Heights is below the average paid to other patrolmen in the east side suburbs. The officers would need a 4.25% increase just to get to average. The City's offer would, according to the Union and according to Union Exhibit 8, cause the bargaining unit to be 8% to 9% below average for all of the east side suburbs. In comparing all of Cleveland suburbs, the bargaining unit is still below average according to Union Exhibit 9. In Union Exhibit 10, showing the average increase for statewide regions and jurisdictions, the amount is 3%.

In spite of the below average pay, the City has successfully limited the patrol officers' pay increase to zero in 2005.

The main internal comparable is the Warrensville Heights firefighters. The Union has stated that the EMT bonuses cause more disparity between the police officers and the firefighters. Because of the new contract entered into in 2006, the firefighters are working 199 hours less than they did the previous contract period. See Union Exhibit 13. The Union argues that the firefighters work less hours than the police causing a disparity between the officers. According to the internal pay increase comparability analysis, Union Exhibit 14, the police officers would still have a lower annual pay rate than the firefighters even with acceptance of the Union's demands. The acceptance of the City's offer for wage increases would result in even more of a disparity in pay between the firefighters and the police officers. According to the Union this does not include hazmat bonuses. If hazmat bonuses were computed, there would be more of a disparity in annual wages paid.

The City claims that the payment of the bargaining unit officers is comparable. The City claims that OPBA officers are paid more than the lieutenants with the firefighters. The City further states that the firefighters worked 2,704 hours per year for the year 2005 with an average of 15 years of service. The bargaining unit officers work 2,080 hours with an average of 7 years of service.

The City states that since the firefighters work more hours per year than the police officers, there is a significant difference in hourly wage rates. The police officers in 2005 earned \$26.88 per hour whereas the firefighters earned \$22.53 per hour. The City states that the OPBA earns more than the firefighters even though the OPBA officers have less years of service than the corresponding firefighters. It follows that the Union proposal would result in significantly higher hourly wage rates for the police officers than the firefighters because the firefighters work more hours. The City argues that the firefighters work over 500 more hours than the police officers. Under the City's proposal, the hourly rate for the OPBA officers is still higher than that of the firefighters even though the firefighters are higher with seniority.

The evidence produced by the City is that even though the police officers may earn less per year, their hourly pay is more than the pay of the firefighters.

The City now argues that there is an inability to pay because of the statute titled "Appropriation Limited by Estimated Revenue: ORC §5705.39." The City did not raise this argument in fact finding. This gist of the City's argument is that the City maintains that it cannot appropriate monies in excess of what the county auditor has approved. The City stated that it had already submitted the estimates to the County Auditor and the County Auditor has already approved the appropriations based upon the estimate given by the City. Since the estimate from the City does not include an appropriation that would meet the demand of the Union, the City

cannot appropriate funds to cover the demand of the Union. Since the City has already estimated only so much for law enforcement and since the auditor has already approved that estimate, the City cannot and will not appropriate any further funds for law enforcement. That being said, the City now argues inability to pay.

The City said that the same last and best proposal has been offered to the other Unions and the other Unions have agreed. The police chief testified that the firefighters work 78 days more per year than the bargaining unit members. Therefore, there is an equalization of the annual pay differences between the firefighters and the patrol officers.

The Mayor further testified that 8 employees were laid off because the City was running a deficit. She further testified that although capital assets go to the value of the City, it is not cash and it is not readily available money to give for operating expenses.

The City admits that in 2002, there was a tax increase and that the City is on the "right track." However, the City receives only 13% from the property taxes collected.

The City further says that at one point in time there was a large carryover in funds from year to year, but now there is a low carryover. The Mayor states that her administration has worked hard to bring financial stability to the City and they are definitely looking forward. The Mayor testified that there are certain areas in the City that are developing, but the tax dollars are not there now. The Mayor states that because of that the City does not have the financial resources to pay. The Mayor further testified that no police officers have left the city for low compensation and that there is a low turnover rate. Therefore, those in the bargaining unit must be "happy" with their job. Finally, none of the salaried employees got raises.

The history of the parties for collective bargaining has been contentious. The fact finders and conciliators determined a decade ago that the pay received by this patrol unit was below

average. There has been a continued movement by the bargaining unit to obtain an “average” rate of pay. The annual rate is still below average with the external comparables.

If the final offer of the Union is accepted, the Union will reach approximately the “average” pay for the external comparables. If the final offer of the City is accepted, the patrol officers will continue to be paid below average rates.

The major internal comparable has been the City’s firefighters. If we look at a yearly rate of pay, the police officers are receiving a less pay than the firefighters. If we focus in on the hourly pay, the police officers are earning more than the firefighters.

The interest and welfare of the public demands that the police officers obtain a fair wage that the City can afford. This City is progressing through the dedication of Mayor and her administration. This progress cannot however go on without a well managed and fairly compensated police department. Currently, the pay of the police department is below average.

In its final offer, the Union eliminated the retroactivity issue. Although the demanded 4% bonus may be similar in the amount of pay that the unit would obtain if there was a retroactive 4% increase to January 1, 2005, the fact of the matter is that the Union is not asking for retroactivity. There is no retroactivity limitations as to what the bonus is based upon on so long as the payment is after January 1, 2006 and not retroactive to January 1, 2005.

The employer has now, at conciliation, raised the issue of inability to pay. This is somewhat surprising since inability to pay was not raised at the fact finding. Its argument for inability to pay states that because the City had already estimated a certain amount to be appropriated for law enforcement and since the auditor has already acted under §5705.39 of the Revised Code on that estimate, the City states it is prohibited from paying to law enforcement more than what was appropriated pursuant to that statute. In other words, the City is not saying

that it does not have the money or funds to finance the demand of the Union, the City is stating because its estimate for law enforcement was already approved by the auditor, and since the demand by the Union was over the estimate approved by the auditor, the ceiling placed by the City and approved by the Auditor manufactures an artificial inability to pay. Part of the statute reads as follows:

“No appropriation measures shall become effective until the county auditor files with the appropriate authority a certificate that the total appropriations from each fund taken together with other outstanding appropriations, do not exceed such official estimate or *amended* official estimate.” (Emphasis added).

The City may amend its official estimate according to the Statute. Otherwise, if the City was unable to amend its official estimate, the City could, by strategic planning, sabotage the collective bargaining process.

The fact finder had some concerns about the City’s financial picture. However, the fact finder also found that there are “substantial developments now under construction or just opening which will financially benefit the City.”

The undersigned finds that the City has not proven inability to pay.

The fact finder found that the “police pay has been somewhat lower than in adjacent cities.” The recommendation by the fact finder was 3% for 2005, 4% for 2006 and 4% for 2007.

The City proposed to skip over the pay increases for the year 2005. The City’s offer is 4% in 2006 effective January 1, 2006 and 4% effective January 1, 2007. The Union proposes an 8% pay raise in 2008 and a 4% pay raise in 2007.

The Union further demands that no later than 60 days following the issuance of the conciliator’s decision each bargaining unit member shall be entitled to a lump sum payment of 4% of the employee’s gross wages for 2005. Gross wages do not include either special capacity annual premiums (Article 15 §2) or uniform and maintenance allowances (Article 24 §1).

The compensation requested by the Union will bring this law enforcement unit to the "average pay" of external comparables. The City has the ability to pay this amount.

The undersigned is aware that the last and best demand of the Union exceeds the amount recommended by the fact finder. The recommendation of the fact finder is higher than the last and best offer of the City.

By the rules of conciliation the undersigned cannot modify the last and best offers but must choose between the two.

DECISION

The last and best offer of the Union shall be compensation for the bargaining unit members:

"Effective January 1, 2006	8%
Effective January 1, 2007	4%

No later than sixty (60) days following the issuance of the Conciliator's Decision, each bargaining unit member shall be entitled to a lump sum payment in the amount of 4% of the employee's gross wages for the year 2005. Gross wages do not include either special capacity annual premiums (Article 15, § 2) or uniform and maintenance allowances (Article 25 §1)."

ISSUE NO. 2-ARTICLE 25, INSURANCE

DISCUSSION

"The City agrees to the language proposed by the Union."

Both representatives signed off on the above agreement.

DECISION

The language in the contract shall be as follows:

"The City shall provide single, and where appropriate, family hospitalization coverage substantially equal to the Medical Mutual of Ohio, Super Med Plan

hospitalization plan in effect in the date of the execution of this Agreement. The City shall pay the full cost of such coverage during the period of this Agreement. *For the year 2006, the City shall reimburse any employee to the extent he/she incurs expenses per the deductible that exceed \$1,000.00.* However, the City reserves the option, should it choose, of securing any additional coverage or benefits at any time during the period of this Agreement, but in no manner decreasing the degree of benefits as provided at the time of execution of this Agreement.”

ISSUE NO. 3-ARTICLE 14, DUTY HOURS

DISCUSSION

The parties agreed upon the language to be added to Article 14 §2.

DECISION

Article 14 §2 shall be part of the collective bargaining agreement and shall read as follows:

“The Employer may change and employee’s schedule only in instances of emergency, manpower shortage, or at the request of the employee. The Employer shall provide no less than 18 hours notice to any changes in the employee’s regularly scheduled shift. Employees not provided at least 18 hours notice of a change in their regularly scheduled shift shall be entitled to four hours at overtime rate of pay or at compensatory time.”

ISSUE NO. 4-ARTICLE 15, PREMIUM PAY

DISCUSSION

The parties agreed that the language proposed by the Union shall be the last and best offer of both parties.

DECISION

Article 15 shall be part of the collective bargaining agreement and shall read as follows:

“Section 1:

(e) Effective January 1, 2006, an officer whom management designates to act as a Field Training Officer (FTO) shall be paid one hour of *overtime* for each training shift. Such compensation may be taken as compensatory time.

Section 2: Effective January 1, 2006, those officers officially signed to the Police "Accident Investigation Unit," the "Motorcycle Unit," and as a "K-9 officer(s)" and "SWAT officers," as designated by the Chief of Police, shall receive additional annual premium pay of \$600.00 payable in monthly increments of \$50.00, or such pro rata bases thereof, as will evidence the time officially on duty in such capacity."

ISSUE NO. 5-ARTICLE 16, HOLIDAYS

DISCUSSION

The Union requests that another holiday be added, to wit: Veteran's Day, making the total number of holidays twelve per year. The Union argues that since they took a concession on health care it would be fair to obtain more holiday time.

The City introduced evidence that in seventeen cities listed, only five have more than this city. Neither the firefighters nor the teamsters have this extra holiday. The City had stated that eleven holidays was the national average.

The fact finder recommended that there be no change in the holidays and that there not be an additional holiday for Veteran's Day.

DECISION

Holidays under Article 16 shall remain the same and there shall be no extra holiday for Veteran's Day.

ISSUE NO. 6-ARTICLE 18, SICK LEAVE

DISCUSSION

At conciliation, the Union withdrew its proposal for sick leave.

In their proposal, the City opposed any change and requested that the sick leave article and section remain unchanged.

In fact finding the issue was withdrawn with the understanding that the OPBA will discuss the sick leave pool with the firefighters and if they agree, present as a joint plan to the City.

DECISION

There shall be no change with the sick leave under Article 18 of the CBA.

ISSUE NO. 7-ARTICLE 24, UNIFORM ALLOWANCE

DISCUSSION

The Union again stated that with the concessions in health insurance, they want to make it up in other areas. The Union requests an increase in uniform allowances to be paid in equal installments quarterly. The City opposes this as being an unjustified increase in an economic issue.

According to the fact finder, the current allowance appears to be adequate to cover the actual costs of replacing the uniforms.

DECISION

There shall be no change in the uniform allowance and Article 24 §5 shall remain unchanged in the collective bargaining unit.

ISSUE NO. 8-NEW ARTICLES, PART TIME JOBS

DISCUSSION

The Union proposed to adding three new articles regarding part time jobs. The fact finder stated that the issue was withdrawn with the understanding that the Union will work with the Chief to reach a mutually satisfactory adjustment of the complete ban of police working outside the City. During the conciliation, the representative of the Union agreed that it was "off the table."

DECISION

Since the parties agreed that the issue regarding part time jobs were "off the table," this conciliator will take no action on this issue.

**ISSUE NO. 9-OPBA AND CITY SETTLEMENT TO
2000 UNFAIR LABOR PRACTICE (ULP)**

DISCUSSION

This issue was withdrawn by the Union. The parties recognized the settlement resolved this issue. The issue is withdrawn.

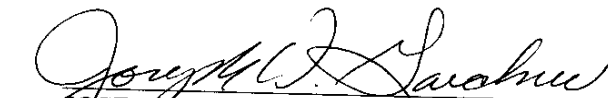
DECISION

No decision will be made on this matter and no action will be taken by this conciliator.


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CERTIFICATION

A copy of the foregoing Fact-Finding Report was sent this 2nd day of March 2006, via Certified U.S. Mail/RRR to: Rhonda Ferguson, Attorney at Law, c/o Mayor Marsha L. Fudge, 4301 Warrensville Center Road, Warrensville Hts., Ohio 44128, and to S. Randall Weltman, Attorney at Law, 10147 Royalton Road, Suite J, PO Box 338003, North Royalton, Ohio 44133.


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EXTENSION AND RETROACTIVITY AGREEMENT

It is hereby agreed by the City of Warrensville Heights (Employer) that in consideration of the Ohio Patrolmen's Benevolent Association (Union) agreeing to extend the time limits until JANUARY 14, 2005 for the parties to initiate the process of fact-finding, including the conducting of a fact-finding hearing in the matter of contract negotiations between the Employer and Union, SERB Case No. 04-MED-10-1082. Employer agrees to waive all limitations on the Conciliator's powers as provided in R.C. 4117.14(G)(11), and agrees that increases in rates of compensation and other matter with cost implications awarded by the Conciliator may be effective in the 2005 calendar year and thereafter.

FOR THE EMPLOYER:

Dated:

12/1/04

Ronald Steg
ASST. LAW DIR

FOR THE UNION:

Date:

12/1/04

Randy Wellman