

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

2006 MAY -5 A 11: 55

IN THE MATTER OF
FINAL OFFER SETTLEMENT AWARD
BETWEEN:

City of Findlay, Ohio)	Case Nos: 05-MED-06-0679, 0680, 0681,
)	and 0682
and)	
)	Conciliator: Colman R. Lalka
Ohio Patrolmen's Benevolent Association)	

HEARING

Dates of Hearing: February 17, and March 14, 2006

Location of Hearing: Findlay, Ohio

ATTENDANCE AT HEARING

For the Employer:

Eileen W. Bensen, Esq.
Anthony P. Iriti, Mayor
Jim Staschiak, II, Service Director
Bill Spraw, Police Chief
Greg Horne, Police Captain

For the Union:

Michelle T. Sullivan, Esq.
Chuck Wilson, Negotiating Committee
David Claffin, Negotiating Committee
Nancy Sherman, Negotiating Committee
John Schimmoeller, Negotiating Committee
David P. Hill, Negotiating Committee
Randall Digby, Negotiating Committee

BACKGROUND

The City of Findlay, Ohio (hereinafter Findlay or City) has recognized the Ohio Patrolmen's Benevolent Association (hereinafter OPBA or Union), as the bargaining representative for certain full-time employees of the City in four Bargaining Units, Patrol Officers, Sergeants, Lieutenants, and Dispatchers.

The Bargaining Units are duly certified by the State Employment Relations Board and had Labor Agreements in effect that expired December 31, 2005. Formal bargaining between the Parties has been ongoing, with Fact-Finding having been conducted and the Fact-Finding Report rejected. Said Fact-Finding Report, issued November 14, 2005, is incorporated herein by reference.

The Parties requested the Conciliator convene a hearing and matters at impasse be determined pursuant to a Final Offer Settlement procedure on an issue-by-issue basis in keeping with ORC 4117 and related Rules and Regulations adopted by SERB. Each Party timely submitted a written report to the Conciliator as mandated by law and SERB.

The hearing was convened on the date and at the place indicated above. At that time the Parties were given the opportunity to present evidence and argument in such a manner that would allow the Conciliator to issue a Final Offer Settlement Award on all disputes between the Parties on an issue-by-issue basis. Provisions were made allowing for a written record of the proceedings.

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Conciliator in resolving the disputed issues were those set forth in ORC 4117.14(G)(7)(a) through (G)(7)(f) and Rules 4117-9-06(H) through (H)(6) of the State Employment Relations Board, to wit:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the 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 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; and

6. Such other factors, not confined to those listed above, 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.

MEDIATION AND AGREEMENT

Prior to the commencement of the hearing mediation was conducted with the Conciliator acting as mediator. Settlements were reached on the issues of Medical Insurance and Rank Differential, and at the request of the Parties and with permission of the Conciliator, said settlement agreements are included herein by reference as the award of the Conciliator.

ISSUE AT IMPASSE

One issue remains at impasse, wages, and each Party's final offers for all four Collective Bargaining Agreements are identical.

CITY'S FINAL OFFER

The City's final offer, as stated in its Position Statement, reads, "For each of the first two years of the Agreements, the base hourly wage rate would increase 2%. In the third year of the Agreements, the City proposes a re-opener as to Article 33, base hourly wage rate. The 3rd year increase carries with it the prospect that the City would share its hoped-for better financial position with the Police Department employees. In no case would any bargained-for 3rd year wage rate increase be lower than 2%."

CITY'S ARGUMENT

The bases for the City's final offer are economic constraints, and parity among all City employees. Nonbargaining unit employees have been granted a 2% wage increase, as have members of the IAFF. Mayor Anthony Iriti, to establish the economic impact of negotiated benefits, compared OPBA and IAFF tentative agreements. For example, the IAFF received a fitness initiative equal to a .0013% increase in addition to the 2% wage increase. Other benefits having an economic impact on the City include, but are not limited to, longevity increases, differences in comp time sell back, and foul weather gear for the OPBA amounting to a .28% increase the IAFF did not receive. Items upon which tentative agreements have been reached,

the Mayor indicated, amount to an increase of .91% for OPBA members and a .38% increase for IAFF members.

Additionally, the Mayor pointed out, the *City of Findlay, Ohio Comprehensive Annual Financial Report for the For the Year Ended December 31, 2004*, indicates revenue for the City stayed the same for 2003 and 2004. Importantly, the Mayor continued, the City is limited to a 1% income tax, and any further income tax increases must be placed on the ballot, something the Mayor is against. For years the City has existed on the 1% income tax due to growth in the City. Growth obviated the necessity of tax increases as in other cities such as Toledo and Maumee. In addition to income tax as a source of revenue, the Mayor indicated that for one year numerous wealthy people passed away which resulted in an estate tax windfall to the City. This is, the Mayor emphasized, a source of revenue that cannot be counted on and cannot be used for ongoing operations.

City Council permits the Auditor to use a portion of estate taxes for reserves and another portion is placed into a Community Improvement Fund. The Community Improvement Fund can be used, for example, in lieu of tax abatement to lure business to the City for economic development, or for any improvement to the community. The Community Improvement Fund, the Mayor states, is a one-time resource, while the Capital Fund is comprised of ongoing revenues.

Moreover, the Mayor indicated the infrastructure is aged, and roads are bad due to a change in EPA requirements resulting in asphalt that does not last as long as the asphalt used prior to the new EPA mandates. By way of comparison, the Mayor noted the county never put money into capital expenditures, it all went into operations, and the county infrastructure is in a state of disrepair.

Service Director, Jim Stashiak, pointed to numerous cost saving initiatives for the years 2004 through 2006, resulting in a \$1.6 million reduction in the budget. Cost saving initiatives include consolidating the Streets, Cemetery, Parks Maintenance, and Forester Departments into a single Public Works Department, as well as cost savings in the Recreation Department, Building Maintenance Department, Development Services Department through consolidation and elimination of positions.

The City has also taken employee related cost saving measures, including hiring and promotion freezes except for police and fire, the elimination of the Assistant Fire Chief rank

through attrition, pay grade increase freezes, and the establishing of new lower pay grades in certain job classifications. The City has also taken steps to control the subsidy of Enterprise Funds from the General Fund resulting in a 23.02% decrease in General Fund subsidies from \$1,222,003 in 2003 to \$856,006 in 2006.

A comparison of budget figures for the Police and Fire Departments for the years 2003 through 2005 show the Fire Department budget at 25.83% of total revenue and the Police Department at 29.05%. That is, Mr. Stashiak indicated, Police Department expenses are outpacing the Fire Department in terms of a percentage of the General Fund. Additionally, Mr. Stashiak continued, the year-to-year carryover in the General Fund has been projected to decrease through 2008. In 2004 expenses outpaced revenues in the amount of \$996,920, resulting in a carryover of \$5.7 million. In 2005 the one-time estate tax anomaly was received, resulting in \$1.3 million for the City, and a \$7.2 million carryover. Projections for 2006 through 2008, assuming 2.2% revenue increases per year, and 2% wage increases per year, show increases in expenses over revenues from \$1.5 million in 2006 to \$2.7 million in 2008, and decreases in the carryover from \$5.7 million in 2006 to \$800,000 in 2008.

The widening gap between expenses and revenues, Mr. Stashiak explained, is referred to as a Structural Imbalance, and this Structural Imbalance affects the City's bond rating. The difference, Mr. Stashiak believes, between the City's 2% final offer versus the Union's 3% final offer is significant in terms of the City's Structural Imbalance. Currently, the City enjoys a good bond rating through the two rating services, Moody's and S&P. In 1998, however, it was noted the City was dipping into its reserves, and the City was informed by Moody's the City was expected to restore the General Fund balance to 25% of annual expenditures.

By letter dated February 9, 2006 from Prism Municipal Advisers to Mr. Stashiak, concern was expressed regarding the City's bond rating, which directly impacts interest rates when the City borrows for capital improvements. The letter noted the City ended 2005 with a General Fund balance of \$7.2 million, approximately 31% of the budget due to the one-time estate tax revenue source. Excluding the one-time revenue source would have resulted in the City falling below the 25% threshold.

Mr. Stashiak agreed with Mayor Iriti that the long-term consequences of transferring capital money to the budget puts the city behind in the maintenance of its infrastructure, and not only will the infrastructure suffer, but eventually there will be no funds to fall back on.

UNION'S FINAL OFFER

The Union has adopted the Fact-Finder's recommendation as its final offer. Said recommendation reads, "It is recommended that the respective Article addressing Wages and Rates of Pay be increased by three percent (3%) effective January 1, 2006. Effective January 1, 2007, said wages be increased by three percent (3%), and effective January 1, 2008, the wage and rate of pay will be increased three percent (3%)."

UNION'S ARGUMENT

Comparatively, according to the Union, Findlay police and dispatchers are falling behind and will continue to fall behind other similarly situated communities. The Union states the Parties are at conciliation to address police and dispatchers, and takes issue with the City's contention of being held to the 2% increase granted to nonunion employees. Being held to the pay increases granted to nonunion employees, the Union contends, defeats the purpose of collective bargaining. Safety forces work 24/7, and by their very nature, it is pointed out, are the largest part of a City's budget. A 3% increase, the Union believes, is merely paying safety forces what they are worth.

As indicated by the Union's listing of comparable cities, including Bowling Green, which is nearby and draws from the same labor pool, starting and ending pay for all four Findlay bargaining units is lower than the average. Unfortunately, the Union's argues, the City's proposed annual pay increases of 2% across-the-board for the next three years will cause the base pay of the four Bargaining Units to fall further behind in its position relative to comparable communities. Of seven comparable cities presented by the Union, for the years 2003, 2004, and 2005, Findlay, at 2%, would have the lowest pay increases. Bowling Green and Beavercreek had pay increases of 3% for 2005 (the figures for 2003 and 2004 were not provided), Fairfield had pay increases for 3.5% in 2003 and 2004 (figures for 2005 were not provided), and for the years 2003, 2004, and 2005 Huber Heights had pay increases of 3%, 3.5%, and 3.5%, Lancaster had pay increases of 3%, 4%, and 5%, Lima had pay increases of 2.75%, 3.25% and 3%, and Westerville had pay increases of 4.5%, 4%, and 4%.

According to the Union, the City's argument of being financially responsible in its final offer isn't borne out by the facts. That is, the Union argues, the City is not in the financial straits it claims. Figures from the Office of Budget Commission, Hancock County, Ohio establish an

11% increase in the General Fund for 2006 over 2005. Also, the letter of February 9, 2006 from Prism Municipal Advisers, the Union points out, indicates, "Many variables are considered by analysts when determining the credit rating of a municipality." Thus, the Union states, carryover is just one factor affecting a City's bond rating.

The Union emphasizes the city of Findlay has a huge business diversity which keeps unemployment down, and provides stability. The City Auditor's report dated May 20, 2005, found in the *City of Findlay, Ohio Comprehensive Annual Financial Report for the For the Year Ended December 31, 2004*, the Union points out, indicates:

* * *

ECONOMIC CONDITION AND OUTLOOK

The unemployment rate for Hancock County has been consistently one of the lowest in the state. Specific employment statistics are not available for only the city, but Hancock County's jobless rate in December 2004 was 4.0%. That rate was the same as December 2003 and below the state average of 5.6%.

The City's economy is not dependent on one industry or employment sector. Our major employers represent office/white collar, industrial/manufacturing, and health care industries. This diversification offers a more stable economic base and has been a major focus of our community development efforts for the last 20 years. We have been able to retain long-time corporate citizens and at the same time attract new businesses to our area. It is estimated that approximately 5,500 people from surrounding communities travel to jobs in the City of Findlay area on a daily basis.

* * *

There are so many factors that have combined to make our city economically successful during the past 20 years. . . .

* * *

Additionally, *Management's Discussion and Analysis for the Fiscal Year Ended December 31, 2004*, states:

* * *

It has long been the policy of the City to borrow money only for those projects that cannot be supported from the current available cash balances. . . .

* * *

Economic Conditions and Outlook

A number of the City's industrial leaders were surveyed at the beginning of 2005 and the consensus was that the local economy is expected to perform well during 2005 even though competition will be stiff and thereby making cost containment and efficiencies a high priority in most operations. All sectors of the local employment base should be very stable.

Whirlpool Corporation's facility here is the largest dishwasher manufacturing plant in the world in terms of volume. Cooper Tire and Marathon, Ashland Petroleum are the other two of our three largest employers. Blanchard Valley Regional Health Center began construction of a \$95 million inpatient pavilion complex during 2004. Retail expansion on both the east side and west side of the City will increase with the road improvements planned for CR236, and SR224.

The same report points out, the Union continues, the City income tax rate has been at 1% since it was imposed January 1, 1967, and income tax receipts are allocated between the General Fund and capital improvement projects. Importantly, the Union emphasizes, that allocation is determined by ordinance of Council and can be changed based on need. Continuing, the Union points out the Community Improvement Fund is intended for numerous projects, including repairing the recreation center, the ball field, cleaning the tire dump, and so forth. Council has the ability to transfer money between the Community Improvement and Capital Improvement Funds, and, the Union queries, if projects are paid out of the Community Improvement Fund doesn't that free up money for the Capital Improvement Fund? Council has the ability to make such transfers, the Union states, if the City's financial position is as bad as it argues.

Of comparable communities, the Union adds, Findlay has the lowest income tax rate. Even if the numbers presented by the City regarding cuts in expenditures are accepted by the Conciliator, it is clear something needs to be done to increase revenue. However, the Union argues, the Mayor has no intention of putting anything on the ballot to aid in this regard.

Finally, the Union insists the IAFF's successor Agreement, when all benefit increases are included, provides for over a 3% increase to firefighters. The 3% pay increase for the four OPBA Bargaining Units is in line with the IAFF increase, is in line with comparable communities, and, the Union concludes, should be awarded.

MANAGEMENT – LABOR RELATIONS

Before beginning this discussion, the Conciliator feels congratulations are in order to both Parties for the efforts expended throughout their negotiations, resulting in agreement in all areas but one, as well as the professionalism exhibited not only to each other but also to the Conciliator during mediation and their respective presentations in conciliation. It is obvious the professionalism of the individuals involved throughout negotiations and these proceedings has resulted directly in a Management - Labor relationship better than found in many locations, both in the private and public sectors.

DISCUSSION

The City, in that it is advocating a position different from the recommendation of the Fact-Finder, indicated it is aware it has a difficult burden to overcome. Based on the evidence presented at the conciliation hearing, which the Conciliator carefully reviewed and considered, the Conciliator is able to reach an award without subjecting the City to an increased burden. That is, the City was unable to convince the Conciliator by a simple preponderance of the evidence of its position that economic constraints and parity should result in a award of the City's final offer. Evidence has convinced the Conciliator that while the City, like other municipalities, does not currently enjoy the ease of fiscal operation of only a few years ago during better economic times, the City is not in the dire straits it advances in advocating its position.

This review begins with a minor item relative to the overall financial picture. Foul weather gear was identified as an increase in benefits to the OPBA while turnout gear for the IAFF was not. It was the Mayor's contention that police officers can work without foul weather gear, but firefighters cannot work without turnout gear. In the opinion of the Conciliator, this contention is somewhat questionable in that it is hard to envision police officers working in foul weather, a time when their presence may be especially needed, without foul weather gear. In the view of the Conciliator, OPBA foul weather gear must be considered as akin to IAFF turnout gear. Excluding foul weather gear as an OPBA benefit, as the Union contends it should be, reduces the amount of increase in benefits to the OPBA, as stated by the Mayor in items of tentative agreements, from .91% to .63%.

The Conciliator accepts as accurate all evidence presented by both parties. The difficulty with the City's evidence, however, is that for statements found in documentary evidence in support of its position, statements in documentary evidence are found contra the City's position. For example, the Mayor cited the *City of Findlay, Ohio Comprehensive Annual Financial Report for the For the Year Ended December 31, 2004*, which indicates revenue for the City stayed the same for 2003 in 2004. The Union, on the other hand, pointed to the same report, noting it also indicates an unemployment rate lower than the state average, and the cites City's economic diversity as the reason for a stable economic base.

Continuing, the City spent a great deal of effort in establishing the potential for a decrease in its bond rating by Moody's and S&P, which directly impacts interest rates. The Union then cited *Management's Discussion and Analysis for the Fiscal Year Ended December*

31, 2004, found in the above *Financial Report*, which indicates the City has a long-standing policy of only borrowing money for projects that cannot be supported from current available cash balances. Thus, it appears the City is not all that dependent upon borrowed funds for its projects. Moreover, *Management's Discussion and Analysis for the Fiscal Year Ended December 31, 2004*, predicts a stable employment base and that the local economy is expected to perform well. The report discussed the City's large corporate residents and employers, and, additionally, predicted retail expansion on both the east and west sides of the City.

Based upon the evidence presented, the Conciliator cannot determine, by a preponderance of evidence, that the City is able to pay no more than the amount of wage increases indicated in its final offer. What was established through the City's presentation was a reluctance to place a tax increase before the voters. The totality of evidence makes it appear as though the City is attempting to remain within a "comfort zone" of fiscal operations by providing wage increases to the Police Department in amounts less than can be provided, while maintaining a high bond rating, and avoiding the discomfort of placing a tax increase before voters.

The Union's evidence of total salary and pay increases to Police Departments in comparable communities was not controverted. This evidence establishes salaries of the four bargaining units of the Findlay Police Department which are the subject of this conciliation to be less than the average paid to like bargaining units in comparable communities. The increase proposed by the City in its final offer would result in its police employees, already below average, losing ground relative to the police and dispatchers in the comparable communities.

The final offer of the Union, on the other hand, when compared with pay increases to the Police Departments of the comparable communities, is within the ability of the City to pay, and should be awarded to the four bargaining units herein, notwithstanding the granting of 2% wage increases to nonunion employees and the IAFF, ignoring for the moment the Union's contention that when benefits are taken into consideration the IAFF received more than a 2% wage increase.

AWARD

It is the award of the Conciliator that the Union's final offer be incorporated into the Collective Bargaining Agreements of the four Bargaining Units herein, Patrol Officers, Sergeants, Lieutenants, and Dispatchers.

Dated: May 1, 2006
Madison, Lake County, Ohio

Colman R. Lalka, Conciliator