

I. PROCEDURAL BACKGROUND

This matter came on for hearing on December 12, 2006, before Jonathan I. Klein, appointed as conciliator by the State Employment Relations Board (“SERB”), pursuant to Ohio Rev. Code Section 4117.14(D)(1), on October 19, 2006. The hearing was conducted between the City of Avon (hereinafter “Employer” or “City”), and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter “Union”), representing the sergeants, lieutenants and dispatchers employed by City. The hearing was conducted at the Avon City Hall, Avon, Ohio. The bargaining units involved in this conciliation consist of approximately eight (8) sergeants and lieutenants, and seven (7) dispatchers.

Following a fact-finding hearing on August 29, 2006, the fact-finder issued a report addressing ten issues upon which the parties failed to reach agreement, which report failed to achieve acceptance by both parties. As of the commencement of the conciliation hearing the parties remained at impasse on the following issues:

1. Article 13 - Health Coverage
2. Article 17 & Appendix A-1 - Compensation, Wages and Work Capacity (Lieutenants)
3. Article 17 & Appendix A-2 - Compensation, Wages and Work Capacity (Sergeants)
4. Addendum to Appendices A-1 and A-2 - Signing Bonus
5. Article 17 and Appendix A-3 - Compensation and Wages (Dispatchers)
6. Article 19 - Work Week/Scheduled Hours

The conciliator incorporates into this Final Offer Settlement Award all tentative agreements entered into by the parties prior to or contemporaneous with the conciliation hearing not inconsistent or in conflict with the selection of last best offers as determined in this Award.

II. CONCILIATION CRITERIA

In the determination of the facts and the selection, on an issue-by-issue basis, from between each of the party's final settlement offers, the conciliator considered the applicable criteria from those enumerated in Ohio Rev. Code Section 4117.14(G)(7)(a)-(f), and Ohio Admin. Code Section 4117-9-06(H)(1)-(6). This criteria consists of the following:

- (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 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;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) 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.

III. FINDINGS OF FACT AND LAST BEST OFFERS

Issue 1: Article 13 - Health Coverage

Not surprising is the fact that one of the central, contentious issues unresolved by negotiations between the parties is the question of health insurance premium contributions. Under the terms of the current collective bargaining agreement established by the process of fact-finding and conciliation in 2003, the City pays 80% of the first \$500 in base premium cost for single coverage, and 80% of the first \$1,000 in base premium cost for family coverage. The employee contribution for eligible bargaining unit employees is 20% of the monthly premium cost up to a maximum of \$100 per month for single coverage, or 20% per month for family coverage up to \$200 per month. Current language also mandates that any premium/contribution cost in excess of the City's base and employee maximums shall be paid by the City.

This issue was presented to the fact-finder, Thomas Skulina, and was addressed in his report and recommendation. The fact-finder noted it is "a sound practice that all City employees from the Mayor through non-union and union members all be on the same page when it comes to

health care.” (Fact-finding Report at 2). He recommended the City’s proposal of a straight 80/20 split of the premium contribution costs.

City Position

The City accepts the fact-finder’s recommendation and award on this issue, and seeks a straight 80/20 cost sharing percentage without a cap. It notes that the 80/20 cost sharing was achieved by the City through fact-finding and conciliation decisions in 2003 with the caps of \$100 for single coverage, \$200 for family coverage. In 2003, the fact-finder described the health care plan as a “Cadillac plan.” Already the City’s employees represented by IAFF and AFSCME have agreed to such a split without a cap on employee costs. Even without a cap, by participation in the Lorain County Health Plan consortium (which the City joined in 1996 after health care costs more than doubled), the health care costs will see a 2½% decrease this year and a corresponding decrease in the employees’ share.

For 2007, the current monthly total cost for family coverage is \$1,088. This represents a decrease from the current premium and a cost to the employees within the bargaining units of \$217.60. (City Ex. 1-F). The City urges internal bargaining unit comparability is more persuasive, and to carve out a group of fifteen employees from the current 106 City employees eligible to participate makes little administrative sense. (City Exs. 1-D; 1-E).

Union Position

The Union emphasizes that throughout the years members of the bargaining unit have paid more than any other group in the Lorain County plan. Further, the patrol unit agreed to a removal of the cap and increase in premium since it came in conjunction with a wage increase of 6%, 4% and 3½% over the term of their collective bargaining agreement. In any event, the Union is not responsible for what other bargaining units in the City may or may not agree to. In its proposal, the Union seeks to maintain the \$100/\$200 cap because for the last five years there has always been a substantial employee contribution toward the health insurance premium. (Union Ex. A). The bargaining unit employees' contribution also compares unfavorably to other comparable jurisdictions. (Union Ex. B). Further, the Union points to the cap on premiums enjoyed by the City's fire fighters. In its final offer, the Union seeks to maintain current contract language with a cap of \$200 per month for family coverage, and \$100 per month for single coverage.

Last Best Offer

Based upon the evidence of record presented, the conciliator concludes that the Union's final proposal on health insurance, *i.e.*, to maintain current contract language, represents the last best offer. This is so for the following reasons. First, the assertion by the City that uniformity of premium contribution helps to prevent administrative errors is laudable. However, no

substantive evidence of either errors or an excessive administrative burden have been demonstrated.

Second, there is no evidence that even with implementation of the City's proposal all employees are governed by an identical 80/20 premium cost sharing arrangement with the City. That is to say that while the fire fighters may have an 80/20 split in effect as of January 1, 2007, contained within their agreement remains the protection of a \$250 monthly premium cap. The bargaining unit's employees enjoy a cap under the current contract language that the City proposes to eliminate. Further, the fire fighters and City agreed that commencing January 1, 2007, any premium/contribution cost in excess of the City base and employee maximums shall be split equally between the City and participating employee. The City's final proposal in this dispute is a straight 80/20 split with no cap, and no cost sharing arrangement similar to that enjoyed by the fire fighters under their current agreement.

Third, while the contract in effect between the City and Teamsters Local No. 52 appears to be a straight 80/20 split of premium costs, Article 29, Section 29.02 refers to a "maximum amount," which amount is not specified in the documentation presented. Fourth, through December 2006 the AFSCME represented employees have yet another contractually approved arrangement whereby effective January 2006 the City pays 80% of the first \$1,200 for family coverage while the covered employee pays 20% up to a maximum monthly amount of \$240. (City Ex. 1-C).

Finally, it is noted that for the City's patrol officers represented by the OPBA, those eligible bargaining unit employees electing family coverage pay 20% of the monthly premium costs, but by the end of December 2006 they enjoy a cap of \$240 per month.

If the City is seeking uniformity then its last best offer, which fails to contain any caps, represents a distinct and different offer of cost sharing from that enjoyed by other City employees. And although the rates for 2007 have decreased by 2.5% (City Ex. 1-F), the conciliator must also consider the reasonable likelihood of future rate increases. Based on the rate of \$1,088 per month, other City employees responsible for a straight 20% will pay \$217.60 as compared with \$200 for the bargaining unit employees – a difference of \$17.60 per month. However, assuming the cost of insurance premiums escalated in 2008 to \$1,200 per month, under the City's proposal the bargaining unit employees would be immediately obligated to meet the \$240 cap enjoyed by the patrol officers, but unlike the patrol officers any increases beyond \$1,200 to be paid purely on the 80/20 split.

In sum, rather than moving toward uniformity as claimed, the City's proposal fails to accomplish that stated goal. Unless the conciliator is persuaded that one of the parties' last best offers represents a solution to troublesome contract language, or provides redress of internal or external bargaining unit inequities between comparables, the current contract language is selected. The fact-finder's recommendation is another factor to consider in the conciliation process, but when the parties' position and evidence at the conciliation hearing itself establish that recommendation is no longer premised on a factually sound basis, the conciliator affords the

fact-finder's recommendation little or no weight. Such is the case on health insurance, and the Union's last best offer to maintain current contract language is selected.

Issue 2: Compensation and Wages and Work Capacity for Lieutenants; Work Capacity for Sergeants (Article 17 and Appendix A-1)¹

The parties were in agreement with the fact-finder's recommendation that the lieutenants' current wages were below average and that the addition of the lieutenants to the bargaining unit warranted a rank differential of 12% greater than the rate paid to a sergeant at the highest wage rate. (City Ex. 2-A). It is in the work assignment section of the wage appendix for lieutenants and sergeants, Section 3 of their respective appendices, upon which the parties differ.

City's Position

The City acknowledges it is enjoying strong growth and is in sound financial condition. It has adopted the fact-finder's recommendation that whenever the chief of police assigns a lieutenant the primary duties and responsibilities of the chief for two consecutive days, the lieutenant shall be entitled to the captain's hourly rate of pay. The fact-finder gave the lieutenants the captain's

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1. Prior to the presentation of argument and evidence on wages, the City offered the identical longevity pay schedule to the lieutenants, sergeants and dispatchers as currently enjoyed by the patrol officers. (City Ex. 1). This offer was outside of the listed open issues for conciliation. Noting the longevity pay offer was not objected to by the Union and appears consistent within the City's patrol officers, the conciliator recognizes Employer Ex. 1 as part of the new bargaining agreement for the lieutenants, sergeants and dispatchers.

rate of pay if taking on some of the duties of acting chief of police. It should be noted that compensation for both the captain and chief are salary based, and they are not overtime eligible. The lieutenants do not, however, take on all the duties of the chief or captain.

The City has no difficulty in hiring or retaining employees within the department. It reviewed the compensation received by the respective units and submitted that while the lieutenants were compensated below average for the Lorain County job market, the sergeants and dispatchers were paid higher than the average. It accepts the fact-finder's report as fair and reasonable.

The Union

The Union accepts the 12% rank differential for the lieutenants. It takes issue, however, with bargaining unit employees working a higher rated position and receiving compensation in the manner proposed by the fact-finder. It offered the testimony of Lieutenant Larry Fishbach, III, that on those days that the captain is off work on vacation, the lieutenant is responsible for payment of bills and the budget for the department. Lieutenant Keith Haag further described how the lieutenant will perform the duties of the captain in his absence.

Historically, the Union emphasizes that there is no set time for performing higher rated work before the higher rate of pay is applicable. In comparison, the department's patrol officers receive OIC pay at the sergeant's rate of pay. It disputed the fact-finder's recommendation that

lieutenants should be paid at the captain's rate of pay when performing the duties of chief of police.

In sum the Union posits that when a lieutenant or sergeant is acting in the capacity of the captain, the bargaining unit employee should receive the captain's rate of pay. Similarly, when acting in the capacity of chief of police, it is the Union's contention that a lieutenant or sergeant should be compensated at the chief's rate of pay. This is consistent with the duties of the temporary position, and the patrol officers currently receive OIC pay at the sergeants rate of pay when acting in such capacity.

Last Best Offer

The current contract language pertaining to sergeants assigned to perform the duties of the chief of police is repeated in the fact-finder's recommendation for lieutenants with the difference being that the lieutenant so assigned is to receive the captain's rate of pay. In choosing between the last best offers, the conciliator notes the distinction in the prior collective bargaining agreement between patrol officers and sergeants in that the latter had to be assigned to the chief of police duties for two consecutive days or more in order to receive lieutenant pay, but that the patrol officer need only be assigned to the primary duties of a sergeant for one shift or more to be entitled to the sergeant's base rate of pay.

What this distinction communicates to the conciliator is a lessening of the impact for purposes of this hearing of the fact the patrol officers continue to be paid the base rate of pay for

sergeants when they are assigned sergeant duties for one full shift or more, since this is identical language to the prior agreement. (Employer Ex. 2-C).

The record establishes that with respect to sergeants, the predecessor collective bargaining agreement granted the bargaining unit employee the lieutenant's hourly base rate of pay for the time served despite the sergeant's assignment to chief of police duties. While the Union's proposed language has some intrinsic appeal in seeking consistency between the various ranks, the fact remains the parties have never compensated a bargaining unit member for *all hours* worked within the higher rank, nor done so at the replaced official's rate of pay. Further, the Union's last best offer fails to address the situation where a sergeant may be working in the capacity of a lieutenant. This issue may require further examination in the future, but at this juncture the evidence fails to support the Union's position. The conciliator finds the City's proposal for lieutenants and sergeants working a higher level position to be the last best offer.

Issue 3: Article 17 and Appendix A-2 (Sergeants) Compensation and Wages

City's Position

The City reasons that the wage differential for the sergeants had been at 15% when the size of the department was smaller, there existed only one lieutenant, and the work load for sergeants was considerably heavier than it is today. Historically, the sergeants and dispatchers in the City have been compensated higher than the average in the Lorain County market, and

lieutenants considerably below average – a fact corrected by the proposed and accepted increase in rank differential for lieutenants to 12% in each year of the agreement.

The police department has grown and with an increased number of lieutenants, the duties imposed upon the sergeants has lessened considerably. Here, the ultimate effect of the City's proposal taken in conjunction with the substantial increase for the patrol officers of 6% in 2006, 4% in 2007 and 3½% in 2008, will be to bring the sergeants and lieutenants in line with the comparables, and to correct for the considerably higher sergeant rate of pay and change in duties. (City Ex. 3-B). In other words, the City's final offer is pay the sergeants a rank differential equal to 15% greater than the highest paid police officer in the City for 2006 and 2007, and reduce that rank differential to 12% commencing with the first pay in 2008. Even with the rank differential reduced to 12% in 2008, based upon a projected average increase in the comparables of 3.5% per year, the sergeants would still remain 4.13% above the average of the comparable jurisdictions.

In its use of selected comparables, the City argues the Union has employed cities that run contrary to the comparables used by the parties for the last fifteen years. Indeed, in determining the mayor's salary the City reviewed other jurisdictions with a full-time mayor, rather than a number of jurisdictions which have part-time mayors. Even so, the mayor's salary will only rise to 78% of the average of the selected comparables by the year 2009.

The Union

The Union's proposal is to maintain current contract language with respect to the rank differential for sergeants. It bases its position on a modified list of comparables which it insists were used by the City to adjust the mayor's salary. By reducing the rank differential for the sergeants in the third year of the agreement, the lieutenants will see a similar reduction in wages. As it now stands, the Union reasons that the sergeants receive a salary approximately 5% below the average of the comparable jurisdictions, not even taking into account increased health care costs. It proposes that the rank differential be maintained, particularly in light of the health insurance proposal made by the City.

Last Best Offer

It is a generally accepted principle in statutory fact-finding and conciliation in Ohio's public sector that in reviewing a range of benefits, wages or other contractual provisions, and comparing how a specific jurisdiction measures up to the so-called comparables in the general geographic area, that the pool of comparable jurisdictions should remain constant. This eliminates the so-called practice derogatorily referred to as "cherry picking" – selecting the most favorable jurisdictions on one issue, and then referring to a different subset or entirely different set of comparable jurisdictions in an effort by one or both parties to reference the most favorable entities with which to compare and contrast proposals on an entirely separate issue. It may be that a particular condition or benefit of employment is provided in a relatively small subset of the

pool of comparables, but that should not condone, in this conciliator's opinion, a change in the historic and/or commonly accepted comparable jurisdictions.

Here, the Union has attempted to promote its proposal on rank differential by means of comparables for which the criteria differ significantly. It is not that there is no overlap, but the focus is on communities with full-time mayors – not bargaining units performing comparable work in accordance with the statutory framework. As pointed out by the City, the mayor's salary is projected to be only 78% of the comparable averages by the year 2009.

Moreover, the adjustment in the final year of the agreement for the sergeants in their rank differential does not cause a reduction in the sergeant wages, but rather a smaller increase than in the first two years of the agreement. The projection clearly delineated in the City's Exhibit 3-B is for the sergeants to maintain more than a 4% higher wage over the average of the comparables based on 3.5% wage increases in the final year of the agreement. This result is not only due to the generous 15% rank differential in the first two years of the agreement, but also in the substantial increases enjoyed by the patrol officers upon which the sergeants' differential itself is based.

Finally, the Union cites to concerns over the cost of health insurance. That cost shall remain the same, however, as the conciliator has selected the Union's proposal on health insurance as the last best offer.

The conciliator selects the City's proposal on this issue of sergeant compensation as the last best offer.

Issue 4: Addendum to Appendix A-1 and A-2 for Lieutenants and Sergeants (Signing Bonus)

The City renewed its proposal, consistent with the fact-finder's recommendation, that upon issuance of a conciliator's award, sergeants and lieutenants shall each receive a signing bonus of \$1,500. The Union agreed to accept the City's proposal, and the conciliator directs insertion into Appendix A-1 and A-2 the proposal for a new section 5 providing a \$1,500 signing bonus upon the issuance of this conciliation award.

Issue 5: Article 17 and Appendix A-3 (Dispatchers) Compensation and Wages

City's Position

Arguing that the fact-finder erred in recommending the dispatchers receive the same wage increase that was paid to the patrol officers effective with the first pay period in July 2006, the City rejects the notion that the dispatchers are entitled to a 6%, 4% and 4% wage increase over the term of the three-year labor agreement. Instead, the City offers a 4% (commencing with the 15th pay), 3½% and 3½% wage increase, together with a \$650 signing bonus, which amounts to more money than the fact-finder recommended. This would be, in the City's view, comparable to what the patrol officers received and would maintain the dispatchers at an above average wage. Indeed, the market assessment for 2005 indicates the dispatchers are compensated at \$1.46 above the average.

Union's Position

The Union argued that the City dispatchers perform extra duties above and beyond the average dispatcher, including records clerk work, LEADS, TAC as well as matron duties. Its proposal is actually less over the term of the collective bargaining agreement at 12% than the fact-finder's recommendation of 13½%. Nor does the Union request a signing bonus inasmuch as wages would be retroactive to January 1, 2006, and no signing bonus had been recommended. It also posits that when taking the cost of health care costs into consideration, the dispatchers receive only 30 cents more per hour than the proper comparables.

Last Best Offer

The conciliator has carefully reviewed the arguments and evidence with respect to the wage compensation for the City's dispatchers. While the City has paid slightly above average wages to its dispatchers, it admitted at hearing that the dispatchers perform additional duties not commonly performed by other dispatchers. The dispatchers also have the added responsibilities to dispatch runs for the City's fire department, and matron duties. It further acknowledged that in the year 2000, an additional 78 cents per hour was rolled into the dispatchers pay for added clerical duties, and they remain 68 cents above the average of the comparables.

The conciliator recognizes that an 11% increase over three years while not unreasonable on its face, does compare unfavorably to the fact-finder's recommendation of 13½% over two

and one-half years. When taking all the evidence into consideration, including the Union's change in position and request for a lesser increase than that recommended by the fact-finder, the conciliator selects the Union's proposal of a 4% increase in wages in each year of the collective bargaining agreement as the last best offer. There exist good reasons why the dispatchers were paid higher than several of the comparables based on their duties and responsibilities, and the conciliator sees a reduction in that compensation recognized by the parties seven years ago to be unwarranted and without foundation.

Issue 6: Article 19, Work Week/Scheduled Hours, Section 5

City's Position

Under the current collective bargaining agreement, bargaining unit members are permitted to accrue ninety (90) hours of compensatory time. The fact-finder recommended a reduction in the accrual limit to sixty (60) hours of compensatory time, stating "[t]o cut it to sixty hours from ninety hours is not unreasonable." (Skulina Fact-finding Report at 6). The City accepts the fact-finder's recommendation. The City views this issue as more critical because of the small size of the bargaining unit.

Union's Position

The Union proposal is to maintain current contract language. Most bargaining units in the comparable jurisdictions enjoy up to 240 hours of compensatory time off. It reasons that

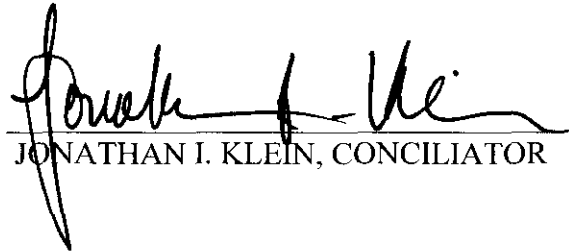
there has been no showing of an increase in overtime as a result of use of compensatory time. Ninety hours is not excessive as a compensatory time limit, and it was not taken away from the patrol unit.

Last Best Offer

The conciliator selects the Union's proposal to maintain current contract language as the last best offer. A review of the comparison survey produced by the City, City Ex. 6-A, simply fails to support the reduction it now seeks. The current contract language appears imminently reasonable, and indeed is far less compensatory time than is permitted in other, comparable jurisdictions as evidenced by the City's own chart. Nor is there any rational basis offered by the fact-finder for his recommendation of a reduction to sixty (60) hours. In the absence of any showing of administrative or scheduling problems as a result of the current contract language, and where the maximum accumulation is on the lower end of the comparable jurisdictions, the conciliator must select the Union's proposal to maintain the current contract language as the last best offer.

FINAL AWARD

Each of the last best offers selected by the arbitrator shall be incorporated into the parties' new collective bargaining agreement, together with all tentative agreements not inconsistent with the terms of this Final Offer Settlement Award.

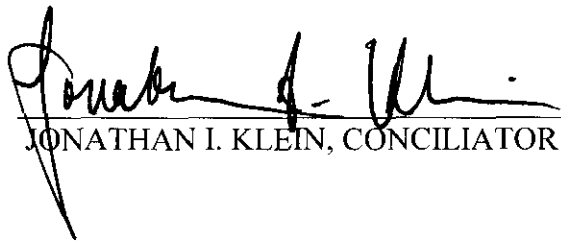


JONATHAN I. KLEIN, CONCILIATOR

Dated: May 15, 2007

CERTIFICATE OF SERVICE

Originals of this Final Offer Settlement Award were served upon Sandy Conley, Account Manager, Clemans, Nelson & Associates, 2351 South Arlington Road, Suite A, Akron, Ohio 44319-1907, and upon Lucy A. DiNardo, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 2721 Manchester Road, Akron, Ohio 44319, and upon Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, each by U.S. mail, sufficient postage prepaid, this 15th day of May, 2007.


JONATHAN I. KLEIN, CONCILIATOR