

STATE EMPLOYMENT
RELATIONS BOARD

2005 OCT 20 P 12: 16

STATE EMPLOYMENT RELATIONS BOARD
CASE NO: 05-MED-08-0785

In The Matter Of The Conciliation Between:

THE CITY OF MEDINA) (Police Sergeants)
)
 -AND-)
)
 OHIO PATROLMEN'S BENEVOLENT)
 ASSOCIATION)

ATTENDANCE:

For The City:

Robert J. Tscholl, Esq., Attorney
Chief Dennis Hanwell Chief of Police

For The Union:

Mark J. Volcheck, Esq., Attorney
Thomas Carrell Representative For
Medina Sergeants

BEFORE ALAN MILES RUBEN, CONCILIATOR

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BACKGROUND:

The Employer, the City of Medina, Medina County, Ohio, provides police, fire and municipal services for its approximately 25,000 residents.

The Medina Police Department has three Collective Bargaining Units. One consists of twenty-eight Patrol Officers. The second contains twelve Communication Officers, and the third, which is the focus of this proceeding, is made-up of six Sergeants. Each Bargaining Unit is exclusively represented by the Ohio Patrolmen's Benevolent Association, and is a party to a separate Collective Bargaining Agreement with the City. Each of the Contracts became effective as of January 1, 2003 for a term which expired on October 31, 2005.

In advance of the impending expirations of these Contracts, the parties opened coordinated Bargaining for successor Agreements.

After several negotiating sessions the Patrol and Dispatch Units resolved their differences with the City on all of the outstanding issues as follows:

1. **Wages** - The wage scales for each Unit was increased by 3.5% effective as of 1/1/06, and by an additional 3.5% effective 1/1/07.¹

¹ One-half of one percent (0.0005%) of the increases was given as a quid pro quo for elimination of the physical fitness bonus.

2. **Health Care Premium Contributions and Benefits** - The benefits and coverages of the health care plan, employee premium contributions and the contractual language were continued without change. The employees continued to contribute 5% of the health care premium.
3. **Health Care Opt-Out** - The opt-out payment for those employees declining health insurance coverage was increased from \$300/month to \$400/month.
4. **Bonuses** - The \$720.00 physical fitness bonus for Patrol Officers and the corresponding \$720.00 'Clerk of Courts' bonus for Communications Coordinators were deleted.
5. **Uniform Allowance** - The Communication Coordinators' uniform allowance was increased by \$450 dollars to \$960 and the Officers' uniform allowance was increased by \$350 to \$1,382.
6. **Court Time and Holiday Pay** - The parties agreed to language changes regarding notification periods for court time and holiday pay.
7. **Duration** - The successor Contract was for a two-year Contract term effective 11/1/05 through 10/31/07.

The Sergeants Unit, however, remained at loggerheads with the City over the City's proposals to increase the Sergeant's contribution to the premiums charged for health insurance from 5% to 10%, and to eliminate their physical fitness bonus. The City, in turn, rejected the Sergeants' proposal to increase the rank differential above the top step of the Patrol Officers' pay from 12.5% to 14%.

Impasse was declared, and the parties proceeded to Fact-Finding before Fact-Finder Stanley B. Wiener upon their respective proposals.

The Fact-Finder, in a Report issued on May 17, 2006, made Findings and Recommendations on each of the disputed issues.

He rejected the City's proposal to increase the employee health insurance premium contribution, but did recommend adoption of the City's proposal to eliminate the physical fitness bonus.

With respect to wages, the Fact-Finder recommended that the rank differential be increased to 13%, effective as of January 1, 2007.

The City accepted the Fact-Finder's recommendations in their entirety.

The Union accepted the Fact-Finder's recommendations on the insurance and physical fitness bonus issues, but rejected his recommendation for a 0.5% increase in Sergeant's rank differential to become effective in the second year of the Contract.

In consequence of the Union's partial rejection of the Fact-Finder's Report, the State Employment Relations Board issued a Conciliation Order on June 14, 2006, and appointed the undersigned as Conciliator, to resolve, after hearing,

"the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the parties' final settlement offers." ²

Thereafter, the parties timely submitted the pre-hearing statements required by O.R.C. Section 4117(G)(3) and O.R.C. Section 4117-9-06(E) setting forth, inter alia, their respective final offers and supporting position statements on the Sergeant's rank differential issue remaining in dispute.

At the direction of the parties the Conciliation hearing was held on August 31, 2006 at the Medina City Hall.

The parties agreed that all of the provisions of the predecessor Collective Bargaining Agreement which were not amended by consent in the negotiations between the parties, nor by acceptance of the Fact-Finder's recommendations,

²Article 33, Section 2 of the 2003 Contract provided:

"Due to the Contract expiration of October 31, 2005, the City agrees that restrictions on the Conciliator's power pursuant to Ohio Revised Code 4117.14(G)(11) are waived by the City for purposes of negotiating the successor Collective Bargaining Agreement. As such, the Conciliator appointed pursuant to negotiations for the successor Collective Bargaining Agreement shall have full power to award wages and other matters in compensation from the Contract expiration date."

were to be carried forward and incorporated into the successor Agreement, mutatis mutandis.

The Advocates for the parties offered opening statements and made evidentiary presentations with respect to the single unresolved issue submitted to the Conciliator.

The parties jointly submitted the expired April 1, 2003 Contract, and the Fact-Finder's Report of Findings and Recommendations.

On behalf of the City Police Chief Dennis Hanwell testified and offered the following exhibits:

1. A comparison of the 2005 total compensation for Medina County Sergeants with fifteen years of seniority with that of their counterparts in the Police Departments of Brunswick, Wadsworth, Hinkley, Rittman and Brunswick Hills, and the Sheriff's Department of Medina County.

2. The 2006 general wage increase percentages for Patrol Officers in the Police Departments of Brunswick, Wadsworth, Rittman and Brunswick Hills.³

3. The Sergeants' rank differentials over the top step Patrol Officer wage rate for Medina and each of the five other Police Departments.

³The 2006 Contract for Hinkley was not available.

On behalf of the Union, Sergeant Thomas Carrell provided similar information for Police Officers in the Cities of Medina, Wadsworth and Brunswick effective during calendar years 2005 and 2006.

Following the conclusion of the evidentiary presentations, the record was left open for the parties to consider whether they wished to modify their final offers. Both parties subsequently informed the Conciliator that their positions remained unchanged.

The Conciliator asked the parties to supply additional information on or before September 30, 2006 with respect to the following items:

1. Per capita revenue statistics for 2003, 2004 and 2005 for Medina and each of the jurisdictions alleged to be comparable;

2. The size of the Police or Sheriff Department in each such comparable jurisdiction;

3. A comprehensive compensation schedule for Patrol Officers and Sergeants at the ten-year service level in Medina and each alleged comparable jurisdiction for 2004, 2005 and 2006 showing percentage increases in wage rates and Sergeants' differentials, and

4. Adjustment in the compensation statistics in jurisdictions which fully fund pension pick-ups in order to assure comparability.

Responses were timely submitted by both parties for each informational item.

In consideration of the Conciliator's schedule, the parties graciously extended the time within which he might issue his Report and Award until November 1, 2006.

The Conciliator considers below the final proposals and positions of the parties and the recommendation of the Fact-Finder on the issue before him.

In keeping with his statutory obligation the Conciliator has carefully considered the factors enumerated in O.R.C. Section 4117.14(G)(7), viz.:

"(a) past collectively bargained agreements, if any, between the parties;

"(b) comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit 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;

"(c) 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;

(d) the lawful authority of the public employer;

(e) the stipulations of the parties;

(f) such other facts, 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 proceedings in the public service or private employment."

UNRESOLVED ISSUE:

1. Sergeants' Rank Differential:

A. The April 1, 2003 Contract:

Article 26 of the expired Contract provided that Sergeants were to be paid an hourly rate of twelve and one-half percent (12.5%) above the effective top step of a Patrol Officer's pay.

As here pertinent Section 1 provided as follows:

Section 1: Sergeants having one or more years of service as a sergeant in the Medina City Police Department, shall be paid an hourly rate twelve and one-half percent (12.5%) above the effective top step of patrol officer's pay. Upon appointment to Sergeant, the employee shall serve a 12-month probationary period, during which time the sergeant shall be paid an hourly rate six percent (6%) above the effective top step of patrol officer's pay."

B. The Union's Final Offer:

The Union proposes to increase the Sergeants' 12.5% rank differential over the Patrol Officer's top step wage rate by one-half (0.5%) percent to thirteen (13%) percent, effective January 1, 2006, and by an additional one-half (0.5%) percent to thirteen and one-half (13.5%) percent, effective January 1, 2007.

In support of its proposal the Union argues that the only comparable Police Departments are those within Medina County, and, specifically, those of the cities of Brunswick and Wadsworth. Both cities maintain a 14% rank

differential, and, in both the top step Patrol Officers' wage rate exceeds that of the Medina Patrol Officers.

Furthermore, it observes that the Fact-Finder found that the Sergeants' proposal to increase their rank differential would not be inconsistent with the "pattern bargaining" advocated by the City.

C. The City's Position:

The City notes that it reached a "pattern settlement" with the other two Departmental Bargaining Units, both of which are also represented by the OPBA, after multi-Union negotiations in which the Sergeants participated. Since there are no circumstances peculiar to the Sergeants' Unit, the City maintains that all Departmental employees are similarly situated and should be treated in a similar manner.

Unlike the six unionized Police and Sheriff Departments the City identified as comparable, Medina pays its Officers to "workout". If the ten (10%) percent of on-duty time spent by Medina Sergeants in such physical exercise is excluded, the hourly rate paid Medina Sergeants ranks first. Even if their workout time is not considered, their hourly rate is the second only to that of Brunswick Sergeants.

Conceding that the base salary of Patrol Officers in Wadsworth (upon which the Sergeants' rank differential is calculated) is higher than that offered by Medina, the City points-out that Medina, unlike Wadsworth, picks-up the entire amount of the employee contribution to the Police and Fire Disability Pension Fund. This benefit, taken together with others that Sergeants in Medina enjoy, but Wadsworth personnel do not, creates a total compensation package for Medina Sergeants that is between 5% and 10% higher than the total compensation package available to Wadsworth Sergeants.

D. The Fact-Finder's Findings and Recommendation:

Considering the Union's request for a 14% rank differential, the Fact-Finder observed that "the top pay for Medina Sergeants in 2005 was lower than [the top pay for Sergeants in] the comparable Cities of Brunswick and Wadsworth ... [arising from] the 12.5% differential in Medina as opposed to the 14% differential in Brunswick and Wadsworth." He noted further, however, that the Medina Sergeants' top pay, exceeded the top wage rate paid Police Sergeants by Hinkley, Rittman, Brunswick Hills and the Medina County Sheriff.

But, after comparing the total compensation of Medina Sergeants, not just their hourly wages, with that of

Sergeants in Brunswick and Wadsworth, he found that the compensation of Medina Sergeants fell midway between the two.

While he was not persuaded that an increase in the Sergeants' rank differential would be inconsistent with pattern bargaining, he concluded that the superior non-wage compensation benefits enjoyed by Medina Sergeants diminished the significance of the wage disparity, and he concluded that a "one-half percent (0.5%) increase to thirteen percent (13%) in the Sergeants' rank differential to become effective on January 1, 2007 would adequately address the issue.

E. CONCILIATOR'S ANALYSIS AND AWARD:

A number of Conciliators and Interest Arbitrators have taken a narrow view of their role in making an Award where one of the parties has adopted the recommendations of a Fact-Finder and the other has not. They perceive it to be their duty to "give great weight to the recommendations of a Fact-Finder", or to require the objecting party to either "show clear error on the part of a Fact-Finder before rejecting in a Conciliation Award the term contained in a duly considered Report and Recommendation", or otherwise to prove "good cause" for failing to endorse the Recommendation".

These various statements of the deference due a Recommendation by a Fact-Finder are all designed to protect the integrity of the statutory process, and deter use of the Fact-Finder's Report and Recommendation as only a "bottom line" spring board for obtaining better terms in a subsequent Conciliation proceeding.

Fact-Finders are trained, skilled and experienced neutrals, typically selected by the parties, or mutually acceptable to them, and in whose impartiality the parties have confidence. They reach their Findings and Recommendations after careful evaluation of the respective positions of the parties and the available data, taking into account all relevant factors.

The notion is that the Fact-Finder thus stands somewhat in the position of a judge in a non-jury trial, while the Conciliator serves as a quasi-appellate tribunal. Put somewhat differently, there is a rebuttable presumption that the Fact-Finder's Recommendations are correct, but the presumption may be rebutted by showing that relevant circumstances have materially changed since the Report was issued, that significant evidence was not available or considered by the Fact-Finder, that the data relied upon was flawed or otherwise misinterpreted by the Fact-Finder or that some other similar fundamental oversight deprived

the Fact-Finder's Recommendations of their presumptive validity.

Although this Conciliator subscribes to the view that a Fact-Finder's Recommendations ought not to be lightly disregarded, perhaps these formulations represent a too circumscribed reading of the Conciliator's function.

There is no escaping the fact that the Recommendation of a Fact-Finder on a particular issue, while constrained by the evidentiary record and observance of the mandatory statutory factors, represents, in essence, an exercise in judgment. That judgment should take into account the impact of the Recommendation on the long term relationship between the immediate parties, the effect on the relationships and future negotiations with other Bargaining Units, the consequence for the effective and efficient rendition of City services, the collision with competing demands upon finite governmental resources for other services, and the effect upon the recruitment and retention of quality personnel in light of wages and working conditions elsewhere.

There ought to be an opportunity for the Conciliator to set aside a Fact-Finder's Recommendation, at least on those relatively rare occasions when the Conciliator is

convinced that the judgment of the Fact-Finder has been improvidently exercised.

It should be understood that deciding a single issue in a Conciliation proceeding is, to at least some degree, an artificial exercise divorced from reality. The rank differential provision here at issue is but one of a number of interrelated and interdependent provisions which form a coherent economic package. The shape of the package is dependent upon the priorities of the parties and the strategic making and obtaining of concessions.

In the present case, the totality of the Contractual bargain to be entered into by the parties appears to have been fully considered by the Fact-Finder before coming to the conclusion that the Sergeants' existing rank differential should be increased by one-half (0.5%) percent effective on January 1, 2007.

No reasons appear here to disturb the Fact-Finder's Recommendation.

In seeking a greater increase in the Sergeants' rank differential over the top Patrol Officer's base wage rate than recommended by the Fact-Finder, the Union does not suggest that the Sergeants have taken on increased responsibility, nor that Patrol Officers have taken on less. Rather, the Union insists, the Fact-Finder's Report

was flawed because it failed to give controlling consideration to the fact that the two Medina County cities it deemed most closely comparable to the City of Medina - Wadsworth and Brunswick - provide Sergeants with a 14% wage rate differential over the top rate for Patrol Officers. Thus, the case is put squarely on the assertedly unjustified disparity with the wages offered in comparable communities.

However, the rank differential is not an end in itself, but rather a means to an end. When multiplied by the top Patrol Officers' base wage rate, it generates the Sergeants' base wage. But that wage rate, in turn, represents only a portion of the Sergeants' total compensation. And, it is the complete compensation package which is the appropriate foundation for comparability determinations.

The Conciliator therefore looks to the total compensation available to Sergeants in the Medina Police Department and tests that against the total compensation of their counterparts in other jurisdictions the parties deem comparable.

It is problematic whether there is a jurisdiction, which, in all relevant respects, is "comparable" to Medina. There are only two other Cities in Medina County -

Brunswick and Wadsworth - and these are exclusively relied upon by the Union. But, both have significant differences in population size, Departmental membership and financial resources, among other relevant factors.

Medina has some 29,139 residents. Brunswick with 33,388 residents is approximately 1/3 larger. Wadsworth with only 18,437 residents is approximately 1/3 smaller.

Medina has a total uniformed force, exclusive of the Police Chief, of thirty-three uniformed Officers including six Sergeants.

Brunswick has thirty-nine Officers, eight of whom are Sergeants.

Wadsworth has a total force of only twenty-two Officers, of whom only three are Sergeants.

According to the 2004 State audit, the most recent one available, Medina's per capita revenue (from all sources) was \$783.00. Wadsworth's per capita revenue amounted to \$817.00. Brunswick's per capita revenue was \$563.00.

These basic differences among the three Cities are reflected in the total compensation paid to their Sergeants.⁴

⁴ Of the four additional Departments the City suggests are comparable to Medina - those of the Medina County Sheriff, and of Hinkley, Rittman and Brunswick Hills, only Hinkley has a higher Sergeants' rank differential - 21%.

The concept of "total compensation" includes base wages, longevity, shift differentials, pension pick-ups and other benefits such as firearms proficiency allowance, but subtracts employee contributions towards health insurance premiums.

The 2005 total compensation for Medina Sergeants with ten years seniority - a service level deemed representative of the Sergeants in all jurisdictions - amounted to \$61,091.00.

The total compensation for Brunswick Sergeants at \$67,283.00, exceeded that of Medina Sergeants by \$6,192.00, but was greater than that of Wadsworth, at \$58,912.00, by \$2,179.00.

The Union argues that the additional 0.5% increase it seeks in the rank differential for 2006 is necessary to move closer to "parity" with the Sergeants in the City of Brunswick.

The Union's proposal would generate additional wages of some \$282.00 in 2006 and \$584.00 in 2007.⁵

Nonetheless, both Medina's base wage rate and total compensation are higher than that afforded the Sergeants in any of these jurisdictions.

⁵The Fact-Finder's recommendation of a .05% increase in the rank differential would result in an additional wages increase of \$292.00, effective in 2007.

These amounts neither in themselves, nor when multiplied by the six Sergeants who would be entitled thereto, seem significant in light of the City's overall budget, yet, as the City points-out, any such increase is likely to:

"cause the City future problems with its other similarly situated Units, who will not only seek to 'catch-up' at the next negotiating round, but will likely believe that by taking their contract issues to fact-finding and conciliation they will be able to achieve more than they could achieve at the negotiating table by engaging in good faith bargaining with the City. This will ensure that no future contract with these units will be resolved except by a fact-finder or a conciliator."

The Conciliator takes cognizance of fact that historically, Medina Sergeants have earned more than their fellow Officers in Wadsworth as well as in smaller jurisdictions within and outside the County, but less than their colleagues in Brunswick. The Conciliator finds nothing in the evidentiary record which provides a compelling reason to alter the status quo and change the relative rankings.

Under the successor 2006 Agreement Medina Patrol Officers receive a wage increase of 3.5%, while their colleagues in Brunswick and Medina have accepted a 3.0% raise.

This circumstance allows the Medina Sergeants to enhance their financial position relative to their Brunswick and Wadsworth counterparts.

While the 2007 pay rates for Brunswick and Wadsworth, as of this writing, have not been determined, it is likely that the 3.5% increase agreed upon for Patrol Officers in Medina is at least a competitive rate, and, when coupled with a 0.5% increase in the 12.5% rank differential recommended by the Fact-Finder, is likely not only to continue the Medina Sergeants in mid-position between the two other Medina Cities, but further reduce the disparity with Brunswick Sergeants while increasing their advantage over the Wadsworth Officers.

For the foregoing reasons, the Conciliator finds the City's offer, which embraces the Fact-Finder's Recommendation on the Sergeants' rank differential for 2006 and 2007, to be the most appropriate and therefore Awards it.

AWARD:


Accordingly, Article 29, Section 1 is to be revised to read as set forth below and incorporated into the parties 2006 Collective Bargaining Unit Agreement:

"Article 26 - Wages:

"Section 1. Sergeants' having one or more years of service as a Sergeant in the Medina City Police Department, shall be paid an hourly rate twelve and one-half (12.5%) percent above the effective top step of a Patrol Officer's pay until and including December 31, 2006. Effective January 1, 2007, Sergeants having one (1) or more years of service as a Sergeant in the Medina City Police Department, shall be paid an hourly rate thirteen (13%) percent above the effective top step of a Patrol Officer's pay. On appointment to Sergeant, the employee shall serve a twelve-month probationary period, during which time the Sergeant shall be paid an hourly rate of six (6%) percent above the effective top step of a Patrol Officer's pay."

AWARD signed, dated and issued at Cleveland, Ohio this 27th day of October, 2006.

Respectfully submitted,


Alan Miles Ruben
Conciliator

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