



STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

CONCILIATION BETWEEN

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 333

AND

CITY OF SPRINGFIELD, OHIO

CONCILIATOR: JACK E. McCORMICK
HEARINGS: MAY 11, 23 & 24, 2006
Case No. 05-MED-08-0807

2006 MAY 31 P 3:07

STATE EMPLOYMENT
RELATIONS BOARD

CONCILIATOR'S AWARD

FOR THE EMPLOYER:

Jerome Strozdes, Esq.
Law Director
City of Springfield, Ohio
76. E. High St.
Springfield, Ohio 45502

FOR THE UNION:

Patrick Casey
IAAF Local 333
31 E. High St., Suite 333
Springfield, Ohio 45503

Pursuant to State Employment Relations Board's (SERB) letter of February 15, 2006 Conciliator Jack E. McCormick called the conciliation hearing to order at 9:30 a.m. on May 11, 2006, at the City of Springfield Municipal Building, Springfield, Ohio. Present at that hearing were the following:

For the Union:

Rod Rahrle
Ken Dover
Patrick Casey
James Spurgeon
Lonnie C. Snapp
Matt Bruns
Randy Keifer

For the City:

Jerome M. Strozdas, Esquire
Law Director, City of Springfield
J. Michael Beers,
Fire Chief, City of Springfield
Nick Heimlich
Mike Doan

The parties were advised of the law and rules surrounding conciliation contained in Chapter 4117 O.R.C., et. seq.

The parties presented evidence and arguments until approximately 5:00 p.m., at which time the conciliation was adjourned to be continued at the call of the Conciliator.

On May 23, 2006, the Conciliator called the parties to order at 9:00 a.m. in the same location. Present for the parties were all of the above with the exception of Messrs. Casey and Bruns. The parties presented evidence and arguments which were terminated by the Conciliator at approximately 1:30 a.m. May 24, 2006. It is noted for the record that at 8:30 p.m., May 23, 2006, the Union objected to continuing the hearing and requested that it be adjourned to be rescheduled for an additional day so they might have an opportunity to prepare for a response to the City's lengthy presentation and voluminous materials that were submitted. The City did not object to such a continuance and left the decision to the

Conciliator. After considering all the factors, the Conciliator overruled the Union's objection and instructed the parties to proceed. However, there did occur in the evening a one hour break for supper. Inasmuch as an objection was made, the Conciliator feels it necessary to explain the reasoning behind his overruling that objection.

As a matter of general principal, unless one party is introducing arguments and/or material that could not reasonably be anticipated by the opposing party, this Conciliator does not believe that the opposing party should be provided any additional time to respond to those submissions. If this were not the case, no conciliation or fact-finding would, theoretically, ever come to a conclusion. Every time a party introduced a document or an argument the responding party would merely move for an adjournment so it could prepare to respond to that particular submission. As to this specific case, it is noted that these parties have had eight negotiations sessions and have been through fact-finding and mediation by a Federal Mediation and Conciliation Service Mediator. Although a party may not necessarily know the precise documents or precise arguments the other party may be making at the hearing, in this case in particular, the City's arguments could hardly be any surprise to the Union. As it relates to the documents it is unfortunate that the SERB has not adopted a discovery rule similar to that contained in the Ohio Civil Rules which allow an opposing party to request all documents that its opponent intends to introduce at a trial. Nevertheless, the City is on exactly the same

footing as the Union. It had to make its rebuttal and surrebuttal without benefit of seeing the Union's proposed exhibits. Furthermore, the Conciliator consistently stated throughout the hearing that the hearing would not be adjourned unless, and until, both parties had assured the Conciliator that they had nothing more to present. There were three days of presentations made by the respective parties. Considering the fact that there was only one major issue which took up ninety-five percent of that time, the Conciliator believes that both parties had an opportunity to flesh out the issues and make their respective arguments. If the Union was prejudiced by being required to present their case immediately following the City's (which this Conciliator does not believe they were) they were not unduly prejudiced.

BACKGROUND

The City of Springfield, Ohio is a municipal corporation operating under a city charter. It serves approximately 64,358 residents within its twenty-five square mile geographic area.

It is the central city in county seat of Clark County, which is home to approximately 140,000 residents inclusive of city residents.

The City has approximately six hundred full-time employees providing the usual municipal services.

Local 333 of the International Association of Fire Fighters represents the full-time uniformed employees of the City's Fire Rescue Division. These 127 employees include firefighters, lieutenants, and battalion chiefs. The chief and the two assistant chiefs are the only uniformed employees outside the bargaining unit.

The employees in the bargaining unit provide fire suppression, emergency medical, and related services within the city. When the division is at full strength, 123 are assigned to three different battalions. Each battalion is assigned to a twenty-four hour tour of duty followed by forty-eight hours off duty. The remaining four employees, plus the chief and two assistant chiefs, comprise the staff. The staff employees work a forty-hour week, eight hours Monday through Friday.

The City and the Union have negotiated collective bargaining agreements since the enactment of Chapter 4117 in 1984.

The most recent agreement expired as of October 31, 2005. The City asked to meet with representatives of the Union and its two other uniformed public safety unions in March, 2005. Negotiations were held on September 27, 28, 2005; October 3, 10, 18, 20, 28, 2005; and November 3, 2005. These sessions resulted in the resolution of all but three issues.

The three unresolved issues were wages, residency, and the duration of the Agreement. Thereafter, the parties engaged in the fact-finding process. Marcus Hart Sandver was appointed Fact-Finder. He conducted a fact-finding hearing on December 15, 2005.

However, due to personal illness he was unable to issue his report and recommendation until January 20, 2006.

The Union's vote on the report was forty-one to reject and thirty-five to accept, which resulted in a "deemed" acceptance. The City Commission rejected the report by a vote of five to zero. Thereafter, the parties met with Commissioner Steve Anderson of the Federal Mediation and Conciliator Service on March 20, 2006. However, none of the outstanding issues were resolved.

Prior to this conciliation the parties did resolve one outstanding issue and that is that the Agreement shall be for two years rather than for three. This left the two unresolved issues of residency and wages.

RESIDENCY REQUIREMENTS

The Fire Fighters, like all of the City's uniformed public safety employees, have been required to reside within Clark County for the past twenty years. This requirement has reflected the emergency response role of these public safety employees.

The City proposes that in the new contract the residency requirement that they must reside in Clark County be maintained, however, that the City Manager would be allowed to waive the residency requirement based upon a "hardship". The Union objects to such language for two reasons: first, the word "hardship" is too subjective in nature, without some defining language. It correctly points out that such subjectively can only lead to additional

arbitration and/or litigation. The Union's second objection is based upon Senate Bill 82, which was passed by the General Assembly and signed into law by the Governor on January 27, 2006, effective May 1, 2006. This legislation, creates a new section of Ohio Revised Code section 9.481, and generally prohibits political subdivisions from requiring any of its employees to reside in any specific area of the state, but does allow political subdivisions to make an exception to this general prohibition allowing them to reside in adjacent counties. Political subdivisions through an initiative petition passed by voters, or by ordinance, or resolution passed by the legislative authority of the subdivision, may require that employees who are responsible for responding to emergency or disasters to reside in the county where the political subdivision is located, or in any adjacent county in Ohio (which is the precise language proposed by the Union).

The City argues that Senate Bill 82 is unconstitutional as it violates Ohio's "Home Rule" provisions which prohibit the State from imposing such legislation on local government.

Accordingly, if the Conciliator's award follows the City's proposal it would clearly be in conflict with Senate Bill 82. The City, concedes that until a court rules otherwise, there is a presumption of constitutionality of Senate Bill 82. Furthermore, section 4117.10(A) clearly states, in para materia:

Laws pertaining to civil rights, affirmative action, unemployment compensation, workers compensation, the retirement of public employees, residency requirements, ...prevail over conflicting provisions of agreements between employee organizations and public employers. (emphasis added)

Thus, the City's proposed language would be clearly overridden by Senate Bill 82 pursuant to authority of section 4117.10(A). This Conciliator is not prepared to make an award, no matter how meritorious the arguments might be, that is, on its face, contrary to law. The City's argument that the legislation may be ruled unconstitutional sometime in the future is entirely speculative and must be disregarded.

AWARD

The Union's proposal on residency requirements is hereby adopted and shall be made part of this contract.

WAGES

The City has serious budget problems that will be discussed in more detail herein. Since 2002 it has taken action to address the problem as detailed in City Exhibit #4. City Exhibit #5 indicates that the 2006 budget leaves vacant 34 administrative, 20 public works, 9 police and 6 firefighter positions. They have taken a plethora of other steps testifying to the fact that a sincere effort is being made to maintain a minimal level of services while avoiding layoffs.

As the discussion will highlight later, in the final hours the discussion really came down to the way that firefighters are treated, now and as proposed, and how Springfield police are

treated. This is, without a doubt, the same argument that is made each and every time this neutral has a matter involving either the firefighters or the police. The intrinsic problem facing any neutral is trying to make some comparison between firefighters and policemen that somehow mirrors the reality. Having been both a law enforcement officer as well as a law enforcement manager, then as a neutral who has been involved in such examinations for the last twenty-three years, it is this Conciliator's opinion that even with the wisdom of Solomon (to which this Conciliator makes no claim), no one can fashion a satisfactory solution to the conundrum, at least, not to date.

The intrinsic problem in attempting to reach parity between any fire department and its colleagues in the police department, is the fact that, although they are both safety forces, they are different in so many other ways. To cite just a few examples there is of course the obvious: firefighters do not work the same general scheduling protocol that police officers do. In most instances, they work, as here, twenty-four hours on and forty-eight hours off, while police offices normally work a set shift of eight hours. This results in a skewing of non-base wage benefits. It affects accumulation of vacation, sick leave, compensatory time, etc.. To say that "firemen are not policemen" or that "policemen are not firemen" is not to make a value judgment as to the worth of either group. This is an argument that would divide the angels themselves.

Because of the fact that there are so many different variables between the two groups, these variables should have been viewed by

the parties not as stumbling blocks, but rather as building blocks. That is, the parties should have, at least temporarily, set aside the attempt to achieve some nebulous and unattainable "equity" and instead engaged in legitimate horse trading, i.e., bargaining. The numerous non-base wage economic benefits that both groups receive could have easily been traded off until each party, while not conceding equity, was equally satisfied, or dissatisfied. (If both parties are equally dissatisfied it is just as valuable as if both parties are satisfied).

It is noted for the record that the parties submitted over two dozen exhibits each and thick notebooks for Conciliator's review and they were all admitted without objection and all of them were read (several times) and considered by the Conciliator. They are not included in this report as they are simply too voluminous and not all of them may be referred to in this award. The fact that particular exhibits are referred to in this discussion is not to imply that those exhibits received any more weight than exhibits that are not mentioned, but they are only noted as being illustrative of a particular point the Conciliator is trying to make at that time.

The first issue that this Conciliator always addresses in any of his reports is whether or not there is an ability to pay, even if the Employer stipulates as such. In this case the Employer does stipulate that the City does have the ability to pay the "last best offer" of the Union. After a careful budget analysis, the

Conciliator concurs with this City. Accordingly there will be no further discussion as to that issue.

That leaves the concomitant issues of "equity" and "parity". The City's last best offer is that the bargaining unit employees receive a 2.25% increase in their base wages beginning in January of 2007. However, in the first full pay period of January, 2007, they would receive "retro-pay" in the same percentage amount for the last two months of 2006. The City estimates its cost for this to be approximately \$223,000 including fringe benefits.

The Union's last best offer is for a 3% base wage increase effective January 1, 2007 followed by 2.25% wage increase effective May 1, 2007. Thereafter, the parties would engage in bargaining for the out-years in a successor contract. The Union believes that its proposal would cost the City approximately \$396,000, thus resulting in a difference in the cost to the City of approximately \$173,000.

The Fact-Finder found that "Springfield firefighters are paid the average, or slightly above average, what their counterparts are earning at other cities". As a general statement the Conciliator concurs with the Fact-Finder as to this point. However, he went on to estimate that they were paid 9.4% higher than the average. After a detailed study of all the factors, the Conciliator does not agree to that statement. A wage-benefit analysis of a fifteen year firefighter, on its face, seems to indicate that Springfield firefighters are actually paid slightly below relevant comparable cities, on an hourly basis.

An exhaustive review of all the materials submitted by both sides as to external comparables does not lead one to a definitive conclusion regarding the Springfield firefighters' compensation relative to their colleagues.

Accordingly, the Conciliator then shifted to attempt to find a conclusion in the internal comparables. For these purposes both parties asked the Conciliator to look at other groups, including the non-Union group known as "Administrators". This included the police, the Communication Operators (dispatchers), an AFSCME unit. The parties concurred that the Conciliator should look at the top of rank or position in each of the respective units for purposes of comparing. Illustrative of this point are City's Exhibits 12A through 12E. These particular exhibits attempt to illustrate the rate of growth in a horizontal graph beginning in January of 1995 and ending in the current year.

The City states that the Conciliator must concentrate on base wages. The Union counters that giving focus only to base wages does not provide a true picture.

City Exhibit 12E illustrates that the firefighters trend line since January of 1995 is virtually identical to the trend lines of the other internal comparables. It also illustrates that, at least as it relates to base wages, it would appear that there is a gap between Springfield firefighters and City police officers and that gap has varied only slightly over the years between \$1,200 and \$1,500. The City contends that its proposal will virtually close that gap to \$10.00 or less, and thus, create "parity" as well as

resolving a point of contention between the City and the police unit.

The Union notes that first, the gap that has historically existed and would continue to exist under their proposal, and has a rational basis due to "other factors" which do not appear evident when one looks solely at base wages. Second, the Union contends that their proposal, at worst, only perpetuates a two decade history of the wage gap between police officers and firemen. The Conciliator is not going to enter that thicket of trying to determine whether there should be a gap between firefighters and police officers and if so what that gap should be. That simply is too thorny of an issue. Rather, the Conciliator will consider whether or not either of the parties unattractive last proposals would tend to exacerbate current conditions. As discussed earlier above, a cure for any alleged lack of parity between this group is simply not possible. This Conciliator has attempted such cures in over two dozen police and fire unit meditations, fact-findings, and conciliations and simply finds that he ends up chasing his tail. Being unable to cure the patient, the Conciliator takes the position that any good physician should take and that is, at least "do no harm", recognizing that "harm" is in the eye of the beholder. If left to his own devices, this Conciliator certainly could come up with a resolution that, while not curing the patient, would do less harm than either final proposals of these parties have submitted.

Unfortunately the parties have left this Conciliator with a "Hobson's Choice". Fortunately (or maybe unfortunately) the parties will be back at the bargaining table within the next twelve to fifteen months and then perhaps, with some common purpose they may arrive at an agreement, that if, not curing the patient, at least gets him on the road to recovery.

Two budgetary aspects which must be addressed, are the rates of increases, or decreases, in the City's revenue streams and the rates of increases in wages given to all groups, including, but not limited to, the Firefighters, i.e. the trend lines. Ms. Deb Cooper alluded to this, and when questioned stated that she "was not comfortable" with the Union's proposal and certainly the Law Director made this point on numerous occasions throughout.

No matter how meritorious **any** group's wage proposal might be, whether based on internal, external comparables, inflation, past wage freezes, "equity" or "parity", if **rates** of expenditures are not, at least as equal to the **rates** of revenue, granting those proposals would be imprudent.

The Conciliator attempted to create his own chart by synthesizing City exhibits #1 through #3, #7 through #9, #12A through #12E and #20. City #12A through E indicates constant stair-stepping in base wage increases for all employees since 1995. Firefighters received 43.16% over that period, Police 44.43%, AFSCME 42.69%, Administrators 38.01% and Communications Officers 57.0% (the latter was affected by the City going to combined police/fire dispatching in the 1990's). The Conciliator recognizes

that this is raw data, subject to a variety of "other" factors but, wages are the largest component of the City's outlays. One might criticize the City for certain spending decisions in other areas, e.g. the \$500,000 spent to enhance a fire station, however in the bigger picture those decisions, wise or unwise, do not ameliorate the trend lines.

Next, the Conciliator attempted to feed into his chart the City's revenue streams. Here again he focused on the two largest components, i.e. income and profits taxes. Then he made certain assumptions regarding the years 2006 & 2007. He assumed a 1.04% growth in 2006 revenue (see City #20) and 2% growth in 2007. However, due to a bizarre new policy of the State of Ohio in regards to utility taxes pass-through, even this is optimistic. However, the Conciliator assumed the City's very able law director will aggressively pursue and prevail in correcting this egregious "theft" by the State, and/or the utility companies.

Next, the Conciliator added to his chart City #1, #2 and the bar graph preceding page 8 of City #3. Clearly the major sources of City income has not stair-stepped in a pattern that correlates with the wage increases. Granted there are other revenue streams, such as state revenue, federal grants, fees, fines, levies, the fire enhancement fund, etc.. However, the income tax makes up 68.6% of General Revenue (GRF) and 94.4% of the Permanent Improvement Fund (PIF).

Next, the Conciliator blended in City's #7 through #9. City #7 shows that the City's GRF end of year cash reserves have, fallen

from 7.17% of budget in 1996 to 3.62% in 2006, and more importantly, have fallen in nominal dollars without discounting for eleven years of inflation, i.e. constant dollars. In City #9 it is noted, again with one exception, the PIF reserves have fallen dramatically in both real dollars and as a percentage, while debt service has increased.

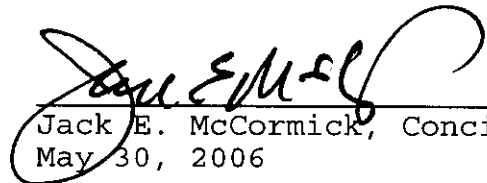
One must also remember that the stalled **rate** of revenue growth comes during a period when health insurance premiums, energy and interest costs have soared.

After, overlaying all of the above, only one conclusion can be reached, and that is: this City cannot continue its **rates** of wage increases in the same stair-step pattern as in the past without either: cutting back on services, reducing wages, laying off employees, increasing debt, or increasing taxes.

While the Conciliator has found that the City has the ability to pay the Union's wage proposal; and while a city is required, by law, to fund any SERB Conciliator's award; and while the Firefighters have raised legitimate reasons why they should be awarded the raises they request, it would be not be just imprudent, but irresponsible for this, or any other neutral to award any wage, or benefit increase that would exacerbate, or even perpetuate, the trend lines that are so apparent.

AWARD

The City of Springfield's final offer with regard to wages in which the members of the firefighters' bargaining unit shall receive an increase in their base wages of 2.25% across the board effective January 1, 2007, and at the end of the first full pay period in January, 2007, to receive an amount equal to 2.25% of wages earned by the employees from November 1, 2006 through December 31, 2006 is hereby adopted in the 2007 contract between the parties herein.



Jack E. McCormick, Conciliator SERB
May 30, 2006

CERTIFICATE OF SERVICE

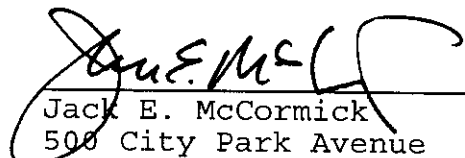
I hereby certify that a copy of the enclosed Springfield Conciliation was mailed, via ordinary mail, postage prepaid, this 30th day of May, 2006, to:

Craig R. Mayton
Executive Director/Administrator
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