

BEFORE THEN  
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD  
2011 LC 22 A 11:48

City of Riverside, Ohio  
Employer

- and -

SERB CASE NO. 05-MED-09-0933

Fraternal Order of Police,  
Ohio Labor Council,  
Lodge No. 161  
Union

Appearances:

For the Employer: Richard J. Holzer, Esq.  
Dayton, Ohio

For the Union: Ross Rader, Staff Representative  
F.O.P., O.L.C., Inc.  
Columbus, Ohio

REPORT AND AWARD OF THE CONCILIATOR

Frank A. Keenan  
Conciliator

BACKGROUND:

By letter dated October 3, 2006, the undersigned was appointed as the Conciliator in the instant matter by the State Employment Relations Board (herein SERB or the Board), in accordance with Ohio Revised Code (O.R.C.) Section 4117(D)(1), and the case came on for hearing before the undersigned on October 26, 2006. The record discloses that the bargaining unit involved is as follows:

"Included: all full-time sworn police officers holding the rank of 'Sergeant'.

Excluded: All full-time sworn police officers with the rank of Patrolman, all sworn part-time officers, auxiliary police officers, Lieutenants, and the Chief of Police."

The parties also refer to this bargaining unit as "Unit A."

Following several collective bargaining sessions, the parties reached impasse on several issues, and their dispute was submitted to SERB for resolution through the Fact Finding and Conciliation processes of the governing Statute O.R.C. 4117, and the administrative rules and procedures of the Board. On September 8, 2006, Fact Finder Jerry B. Sellman issued his Report & Recommendations, which, having not been accepted by both parties, necessitated the instant Conciliation. Coming into Conciliation the parties had reached agreement on all but the following six (6) issues, which remained at impasse, to wit:

1. Article 20 - Compensation, Section 20.1 - Wages

2. Article 20 - Compensation, Section 20.2 - Longevity
3. Article 21 - Vacation
4. Article 22 - Holidays
5. Article 24 - Insurance, Section 24.2 - Health Insurance and Premium Sharing and Section 24.4 (B) Administrative Issues
6. Article 32 - Duration

Prior to opening the hearing, the parties sought Mediation of their issues at impasse. Through the parties' good faith efforts in mediation, with some help from the undersigned, acting as Mediator, the parties reached agreement on: Article 20, Section 20.2 - Longevity; Article 24 - Insurance, Section 24.2 - Health Insurance and Premium Sharing; Article 24, Section 24.4 (B) Administrative Issues; Article 32 - Duration. Thus the parties remain at impasse with respect to the following three (3) issues:

1. Article 20 - Compensation, Section 20.1 - Wages
2. Article 21 - Vacation
3. Article 22 - Holidays

In arriving at the contractual provisions which the undersigned, as Conciliator, directs and orders become and be made a part of the parties' Collective Bargaining Agreement, the undersigned has resolved the disputes remaining between the parties, by selecting on an issue-by-issue basis, from and between each of the parties' final settlement offers. In this

selection process the undersigned, as Conciliator, has taken into consideration the factors outlined in O.R.C. Section 4117.14(G)(7) to the extent the parties have put these factors into play by virtue of their evidence and arguments. In this regard, the Statute's factors are: past collectively bargained agreements, if any, between the parties; 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; 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; the lawful authority of the public employer; the stipulation of the parties; and such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment. In addition, and pursuant to O.R.C. 4117.14(G)(6), the undersigned/Conciliator has also given consideration to the written Report and Recommendations of Fact Finder Sellman.

The format of the Opinion and Award includes the Record, comprised of each parties' position on the issue, a summary of their salient evidence, and their arguments; Rationale, setting forth the reasons for the undersigned's selection of one party's final settlement offer over that of the other party; and the undersigned's order and Award with respect to each issue at impasse. The expired predecessor Teamster contract that is, the parties' January 1, 2003 through 11:59 p.m. December 31, 2005 Agreement, will be referred to as the parties' "current" or "predecessor" Contract.

Issue No. 1 - Article 20, Compensation, Section 20.1 Wages

Record:

At the outset of the mediation, and prior to the hearing, the undersigned took the position that, unlike the Fact Finder, he was unwilling to "crunch the numbers," and deal with the Wage issue in terms of cents-per-hour increases, and requested the advocates to instead discuss and deal with the Wage issue in terms of annual percentages of increases. The advocates agreed to do so. And following failed mediation efforts with respect to the wage issue, both parties modified their initial positions concerning the final settlement offer they would submit to the undersigned, as Conciliator, for resolution, the City raising its initial offer and the Union lowering its initial offer from their respective initial positions going into mediation. Thus

the Union came into the hearing proposing: a 5.5% increase effective 01-01-06; a 3.25% increase effective 01-01-07; and a 3% increase effective 01-01-08. The City came into the hearing proposing a 5% increase effective 01-01-06; a 3% increase effective 01-01-07; and a 3% increase effective 01-01-08.

Both parties rely on external comparables. Thus both parties point to the following municipalities geographically near to Riverside, as comparables: Trotwood; Beaver Creek; Fairborn; Huber Heights; Miamisburg; West Carrollton; and Xenia. The Union additionally contends that the municipality of Moraine is also a "comparable," a contention which the City challenges.

The City, in support of the level of increases which its final settlement offer represents, a level lower than the offer of the Union, asserts here, as it did in factfinding, that during the term of the predecessor Contract, a three year Contract, the bargaining unit received an approximately 4% wage increase per year over the life of the predecessor Contract. These provisions in the most recently past collectively bargained Contract, coupled with its generous final settlement offer, serve to bring the bargaining unit well within the range of the comparable municipalities, argues the City.

In support of its final settlement offer the Union in effect argues that such is necessary to "catch up" with

comparable municipalities and that the City makes no claim that it is unable to pay the Union's final settlement offer.

The record also reflects that wage increases during the three year term of the predecessor Contract in municipalities Statewide were "in-the-threes." Given tame inflation, and absent an event seriously eroding the revenue of municipalities throughout the State, and, more particularly, the comparables relied upon here, the inference to be drawn is that for the term of the instant Contract, which includes 2006, increases "in the threes," have obtained in 2006, and will likely continue into the remaining two years of the instant Contract.

Rationale:

Given the manner in which the bargaining unit was compensated over the life of the predecessor Contract, in point of fact the wage increases were "in-the-threes" along with most of the comparables, and, consequently, as the Fact Finder correctly observed, while said "increases have brought the Sergeants up to more comparable levels with communities of equal size in this region, but the wages [at Riverside] continue to be the lowest of comparable communities." In support of this conclusion the Fact Finder noted that he compared the start and top wages paid by Riverside to the comparables noted hereinabove, on a city-by-city basis, and that "commencing in 2006, the City of Riverside's entry level and top salary for

Sergeants was lower than all other cities, except for the City of Xenia." The Fact Finding Report also reflects that the Fact Finder, quote:

". . . analyzed the [start and top] wages paid by Riverside . . . on an average basis.

Based upon demographic information, Riverside seems to be more comparable in size and operation to Trotwood, Moraine, Xenia, West Carrollton, and Fairborn, than the larger communities of Huber Heights, Beaver Creek, and Miamisburg. The Fact Finder examined average wage rates in four groupings: the average of (1) all of the cities; (2) all of the cities without Beaver Creek and Huber Heights; (3) the cities of Moraine, Xenia, West Carrollton, and Fairborn; and (4) the cities of Trotwood, Moraine, Xenia, West Carrollton, and Fairborn. . . . The wages currently received by Riverside Sergeants fell behind every average."

I concur with the Fact Finder's analysis. In my judgment, given the history of "lagging behind," and given the fact that over the life of the new Contract the parties are apart by only .75%, the final settlement offer which best optimizes the bargaining unit's "catching up" with comparable municipalities ought to be awarded. Accordingly, the Union's final settlement offer in Article 20, Section 20.1 Wages, will be awarded.



Issue No. 2 - Article 21, Vacation, Section 21.1  
- Schedule of Earned Vacation

The Record:

The current Contract, because it is a multiple unit Agreement, that is a Contract covering both Unit A and Unit B, the latter being "all full-time sworn police officers below the rank of 'Sergeant,' but excluding all full-time sworn police officers above the rank of Patrolman, sworn part-time officers, auxiliary police officers, Lieutenants, and the Chief of Police," provides at the commencement of Section 21.1 that "all employees of the Department shall be entitled to vacation time, etc., etc."

More particularly, the parties' Current Collective Bargaining Agreement reads as follows:

ARTICLE 21  
VACATION

Section 21.1 Schedule of Earned Vacation All employees of the Department shall be entitled to vacation leave with full pay in accordance with the following schedule:

<u>Completed years of service</u>	<u>Vacation Time</u>
Six (6) months through Six (6) years	2 weeks
Seven (7) years through fourteen (14) years	3 weeks
<u>Fifteen (15) years through 24 years</u>	4 weeks
<u>Twenty-five (25) years and up</u>	Plus one (1) additional day of vacation for each completed year of service <u>over</u> <u>twenty-five (25) years</u>

After six (6) months of service during an employee's first (1<sup>st</sup>) year of employment with the Department each employee shall be entitled to take two (2) weeks of vacation provided, however, that in the event the employee does not retain employment for a one (1) year period the employee shall lose all vacation eligibility and reimburse the Employer for any vacation taken prior to termination.

The City's final settlement offer with respect to the Schedule of Earned Vacation, at Article 21, Section 21.1 would amend the provisions of the Current Agreement set forth above which are underscored, as set forth below, and otherwise retain the language of the current Agreement at Section 21.1. Thus for its final settlement offer, the City proposes as follows:

Section 21.1 Schedule of Earned Vacation: All sergeants shall be entitled to vacation leave with full pay in accordance with the following schedule:

<u>Completed Years of Service</u>	<u>Vacation Time</u>
Fifteen (15) years through twenty-two (22) years	4 weeks
"Twenty-three years (23) and up	plus one (1) additional day of vacation for each completed year of service over twenty-two (22) years"

The Union's final settlement offer comports with the Fact Finder's Recommendation for Article 21, Section 21.1, which recommendation retains the current Agreement's language, except

for the following amendment and/or replacement language, which enhances the current Contract benefit as follows:

"Section 21.1 - Schedule of Earned Vacation

All Sergeants of the Department shall be entitled to vacation leave with full pay in accordance with the following schedule:

<u>Completed Years of Service</u>	<u>Vacation Time</u>
. . . .	
Fifteen (15) years through twenty (20) years	4 weeks
Twenty-one (21) years and up	Plus one (1) additional day of vacation each completed year of service

In support of its final settlement offer in Fact Finding, the Union argues that its comparable data show below average vacation days in all years-of-service brackets across a sergeant's career. Accordingly, it accelerated vacation time entitlement days over the current Agreement's Entitlement provisions as early as the completion of but five years of completed service. But here it adopts the Fact Finder's Recommendation and, of course, relies on the Fact Finder's Rationale as well.

In doing so the Union states that it feels "a fair wage is more important than vacation in excess of the factfinder's recommendation."

The City took the position in Fact Finding, and here, that comparable data reflects that the City's vacation schedule is not that far removed from the average of said comparables. Nonetheless, here the City has improved the vacation schedule for Sergeants it put forth in Fact Finding.

Rationale:

My review of the comparable data submitted persuades me that the Fact Finder was correct when he observed and concluded that "there is little difference in vacation day entitlement for [the] many levels of service, except for Sergeants with twenty or more years of service with the City . . . [and that] Sergeants with less than twenty (20) years of experience receive entitlement to vacation days in close proximity to their peers in other [comparable] communities." A well accepted tenet in Conciliation holds that, in deference to the Statute's "past collectively bargained agreements" criterion, changes to past agreements are better made incrementally. In my judgment the City's final offer better meets this "incremental" tenet than does the Fact Finder's recommendation, which also constitutes the Union's final offer. Accordingly, the City's final settlement offer will be awarded.

Issue No. 3: Article 22 - Holidays, Section 21.1 Paid Holidays

Record:

Under the parties' current Contract, ten (10) paid holidays are provided for.

The City's final offer, as in Fact Finding, is to retain the current Contract's provisions. At factfinding the Union sought to add to the paid holidays provision a holiday for Christmas Eve Day and a holiday for the employee's birthday. Here the Union's final offer seeks to add the employee's birthday only. The Fact Finder recommended retaining current Contract language, i.e., ten (10) paid holidays.

My review of the comparable data submitted persuade me that the Fact Finder was correct when he found that "in comparable cities [bargaining unit employees] are given the same number of paid holidays," that is, ten (10). Indeed the Union acknowledges that such is so, but argues that, nonetheless, many comparable cities "have given personal days instead of additional holidays for various reasons." (Emphasis supplied). The Union additionally acknowledges that it may have fallen short in its explanation of what it sought in this Article in Fact Finding, that is, as I understand it, that it may have failed to adequately explain in contract negotiations and/or in Fact Finding, that, more accurately, it was seeking "personal days," and not "holidays" as those two terms are understood and

differentiated in labor relations parlance. And in this context the Union contends that its proposal "for one (1) additional floating holiday (birthday) is a modest proposal in light of comparable data."

Rationale:

The difficulty with the Union's final settlement offer is that it raises a new issue, namely, "personal days," which the record fails to disclose was ever discussed in the course of negotiations or at factfinding. However, it is my view such "new" issues are not properly addressed in this conciliation forum. In any event, even if personal days were regarded as properly raised here, the Union, as noted above, has acknowledged that comparable jurisdictions personal day provisions have been adopted "for various reasons." The record made before me fails to disclose for comparison purposes what those reasons might be and, more significantly, fails to disclose any reason for adopting the personal day concept here. In these circumstances, I am constrained to agree with the Fact Finder that "there exists no basis for increasing the number of paid holidays for the Sergeants in Riverside." The Award shall therefore direct the retention of current Contract language as proposed in the City's final settlement offer.

AWARDS

As indicated hereinabove, and as the parties were informed by Fax on 12-13-06, the Conciliator makes the following Awards:

Issue No. 1 - Article 20, Section 20.1 - Wages

The Union's final settlement offer, i.e., effective 01-01-06 - 5.5%; effective 01-01-07 - 3.25%; and effective 01-01-08 - 3%.

Issue No. 2 - Article 21, Section 21.1 - Schedule of Earned Vacation

The City's final settlement offer, i.e., retain current Contract language except for the following modifications:

Article 21, Section 21.1 Schedule of Earned Vacation All sergeants shall be entitled to vacation leave with full pay in accordance with the following schedule:


<u>Completed years of service</u>	<u>Vacation Time</u>
Fifteen (15) years through twenty-two (22) years	4 weeks
Twenty-three (23) years and up	Plus one (1) additional day of vacation for each completed year of service over twenty-two (22) years"

Issue No. 3 - Article 22, Section 22.1 - Paid Holidays

The City's final settlement offer, i.e., current Contract language.

This concludes the Conciliator's Report and Award.

December 16, 2006

  
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Frank A. Keenan  
Conciliator