

**IN THE MATTER  
OF  
INTEREST ARBITRATION  
CONCILIATION  
OPINION & AWARD**

STATE EMPLOYMENT  
RELATIONS BOARD

2007 DEC 10 A 10: 15

<p><b>BETWEEN</b></p> <p><b>FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.</b></p> <p style="text-align: center;"><b>V</b></p> <p><b>CITY OF ELYRIA, OH</b></p>	<p><b>CASE NO: SERB 06-MED-<del>06-0134</del></b> <b>(Dispatchers) 02-0135</b></p> <p><b>CONCILIATOR: JOHN S. WEISHEIT</b></p> <p><b>HEARING DATE(S): Nov. 20, 2007</b></p> <p><b>AWARD ISSUED: December 7, 2007</b></p>
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**REPRESENTATION  
by**

<u><b>Employer Representatives</b></u>	<u><b>Union Representatives</b></u>
<b>Howard Heffelfinger, Exec. VP CNA</b>	<b>Lucy DiNardo, FOP-OLC Staff Rep.</b>

**AUTHORITY**

This matter was brought before Conciliator John S. Weisheit, in keeping with terms of the collective bargaining agreement between the parties, provisions of ORC 4117 and rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Conciliator are for consideration and determination, based on merit and fact according to terms of the labor agreement and provisions of ORC 4117.

## **BACKGROUND**

The City of Elyria, Ohio, hereinafter called the “City” and/or the “Employer” , recognizes the Fraternal Order of Police, Ohio Labor Council, Inc. , hereinafter called the “FOP” and/or the “Union”, as the collective bargaining agent for the Dispatchers.

The parties engaged in good faith bargaining in keeping with the terms of ORC 4117. Upon reaching a state of impasse, the parties requested the Fact Finder to engage in mediation. The Fact Finder engaged in an extensive mediation with the parties. The Fact Finder’s Recommendation was not approved by the Union and the matter was then moved to Conciliation, as provided under ORC 4117. Prior to the Conciliation Hearing, the parties met and tentatively agreed to a number of issues.

The parties attained this Conciliator through the State Employment Relations Board (SERB) in keeping with terms of ORC 4117. The Conciliation Hearing was convened on November 20, 2007. The parties timely submitted pre-hearing reports, pursuant to ORC 4117. All matters were resolved in the bargaining process by addition, deletion, or modification of terms negotiated by the parties.

The following Articles included provisions at impasse prior to the convening of the Conciliation Hearing:

Article 10 Work Schedule/Hours  
Article 12 Overtime  
Article 14 Wages  
Article 17 Holidays

Article 19 Sick Leave  
Article 21 Bereavement Leave  
Clothing Allowance  
Duration of Contract

Except for the above cited terms, all other issues have been resolved and tentatively agreed to.

The parties requested a period of mediation prior to the convening of the formal Conciliation Hearing. The parties authorized the Conciliator to apply information he acquired through the mediation process for reaching a final determination, should mediation not reach a final agreement between the parties on these remaining issues.

During the mediation at the Conciliation Hearing, both parties agreed to accept the Conciliator's recommendation on the following issues:

Article 10 Work Schedule/Hours  
Article 12 Overtime  
Article 17 Holidays

Article 19 Sick Leave  
Article 21 Bereavement Leave  
Duration of Contract

The following terms remained unresolved and at impasse for the Conciliator's determination:

- (1) Article 14 Wages Sec. 1-3
- (2) Article 33 Clothing Allowance.

In addition to the oral information offered in the mediation session, the Union and Employer offered additional written documentation regarding their respective position on the two issues remaining at impasse. The Hearing was adjourned after the parties indicated they had nothing additional to submit on behalf of their position regarding the remaining unresolved issues.

This Conciliation Report is based on facts provided in document and testimony introduced in mediation and additional documents offered during mediation and at the Conciliation Hearing.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this

Award:

1. Past collectively bargained agreements between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit 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 above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

**SUMMARY OF PARTY POSITIONS  
ON ISSUES AT IMPASSE**

**The last final offer of the two remaining issues:**

**1) Article 14 Wages, Section 14.1 -14.3**

**Union Final Offer:**

**A wage increase of 3% , effective July 7, 2006, 3%, wage increase effective July 7, 2008, and 3% effective July 7, 2009.**

**Employer Final Offer:**

**Proposes a 2.5%, wage increase effective July 7, 2007, 3% wage increase effective July 7, 2008, and 3% wage increase effective July 7, 2009.**

**2) Article 33 Clothing Allowance, Section 33.2**

**Union Final Offer**

**Effective July 7, 2006 each bargaining unit member is to receive an annual \$420.00 clothing allowance.**

**Employer Final Offer**

**Accept the Fact Finder's recommendation to not include a clothing allowance in this Agreement.**

**CONCILIATOR'S DISCUSSION & DETERMINATION**

The parties have engaged in good faith bargaining throughout the negotiations process. This included the mediation efforts at Fact Finding as well as Conciliation. There are two unresolved issues before the Conciliator to be decided upon completing the successor Collective Bargaining Agreement (CBA).

In the course of reaching a final determination and establish a totality to the CBA as provided under ORC 4117, most issues addressed in negotiations were resolved between the parties. In

addition to being provided rationale and background in this round of bargaining from the parties, also is a comprehensive reflection of the neutral Fact Finder who spent a significant amount of time and consideration in making a comprehensive recommendation regarding initially at impasse between the parties.

There is a concept a number of Conciliators apply in relation to the unique provision under in the Ohio Collective Bargaining Law (ORC 4117) which calls for the application of last-best offer, final and binding conciliation. It is based on the premise that the findings and recommendation(s) of the Fact Finder should generally be upheld in Conciliation. The principle is based on the axiom that the Fact Finder is more likely to have a broader and more in-depth understanding of the issues in dispute than the Conciliator. This is particularly of merit when the parties have accepted some, of the Fact Finder's Recommendations prior to Conciliation. Use of this principle provides an alternative to a common acceptance that Conciliation is essentially a second "bite of the apple". This position therefore suggests that the Fact Finder's determination and recommendation should prevail beyond that of the Conciliator's regarding a more limited number of unresolved issues. This concept suggests that a different determination is applicable only if it is determined that a significant error is used in the Fact Finder's determination, or if new and convincing facts are offered into the record that had not been entered into the record at Fact Finding or other. This principle is considered most applicable in this instant situation.

The City accepted the recommendations put forward by the Fact Finder without reservation. The Union, while agreeable with a number of the Fact Finder's recommendations, rejected his Report. As such, it rejected the totality of the Agreement.

At the Conciliation Hearing, the Union offered no new, compelling or convincing argument to alter the Fact Finder's recommendation.

### **SUMMARY**

The position of each party represents good faith in bargaining in an attempt to come to agreement in this instant case. The Conciliator is without authority to modify the final position taken by either party in its final position on a issue by issue basis.

There is no argument raised regarding the ability to pay. There is a strong economic tie related to the remaining issues before the Conciliator.

Considering the evidence presented, it is determined that the most appropriate position on each issue that is to be included in the Contract is the position put forth by the Employer.

## **DETERMINATION**

### **Issue #1 Article 14.1-3 - Wages**

It is determined that the Final Position of the Employer should be included in the Contract.

**A 2.5%, wage increase effective July 7, 2007, 3% wage increase effective July 7, 2008, and 3% wage increase effective July 7, 2009.**

### **Issue #2 Article 33 Clothing Allowance**

It is determined that the Final Position of the Employer should be included in the Contract.

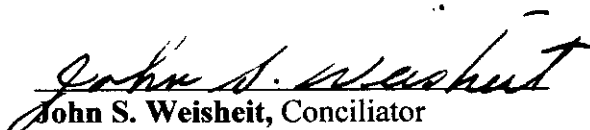
**Accept the Fact Finder's recommendation in not including a Clothing Allowance in this Agreement.**

## **TOTALITY OF AGREEMENT**

- This will affirm the foregoing report, consisting of **8 pages**, includes the findings and determinations set forth in this Award by the below signed Conciliator are to be made the terms in the Agreement between the parties being retroactive from 12:01 a.m. July 7, 2006, and will expire July 6, 2009.
- Any matter presented before the Conciliator and not specifically addressed in this Determination and Award were given due consideration in the course of reaching the finding.
- The Agreement shall include all terms tentatively agreed to by the parties prior, inclusive of said issues tentatively agreed to at Conciliation, all terms of the successor agreement not a subject of bargaining, and the Conciliator's determination as set forth in this Award.

To the best of my knowledge, said Report and the included determinations comply with applicable provisions of the Contract between the parties, applicable Sections of ORC 4117 and SERB Rules and Regulations.

I therefore affix my signature at the City of **Galion**, in the County of **Crawford**, in the State of **Ohio**, this date of **December 7, 2007**

  
John S. Weisheit, Conciliator



**JOHN S. WEISHEIT**

Arbitrator

440 Portland Way S.  
Galion, OH 44833  
Phone: 419-462-5228  
Fax: 419-462-1230

STATE EMPLOYMENT  
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**December 6, 2007**

**Lucy DiNardo, Staff Rep.  
FOP- LOC, Inc.  
2721 Manchester Rd.  
Akron, OH 44319-1020**

**Howard Heffelfinger, Exec. VP  
Clemans Nelson & Associates  
2351 S Arlington, Suite A  
Akron, OH 44319**

<b>Case no(s):</b>	<b>CASE NO: SERB 06-MED-06- 0134 (Dispatchers)</b>
<b>Parties:</b>	<b>Fraternal Order of Police, Ohio Labor Council, Inc. V City of Elyria, OH</b>
<b>Issue:</b>	<b>Conciliation</b>
<b>Site:</b>	<b>OH</b>

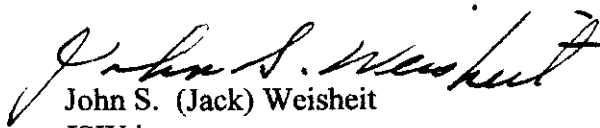
Ms DiNardo and Mr. Heffelfinger:

Enclosed is the Conciliation Determination and Award in the above cited case. Included find the Invoice for professional services and related expenses. This is submitted in keeping with the terms of the Contract and understandings at the Hearing and a signed Form W-9 use in billing processing..

From time to time, I am asked to submit recent awards for publication in professional journals such as CCH and BNA for educational use and reference by labor dispute resolution advocates and neutrals. I make such submissions only with the consent of both parties. If you do not object to this award being submitted no response is necessary. If you do not wish the award published for any reason, just notify me within thirty days of the date of this letter.

Thank you for the opportunity to be of service.

Sincerely,



John S. (Jack) Weisheit  
JSW:jw  
enc.

## CERTIFICATE OF SERVICE

*This will affirm that the Conciliation Report in this matter was served to the below named parties at the stated addresses:*

<b>Howard Heffelfinger, Exec. VP</b> <b>Clemans Nelson &amp; Associates</b> <b>2351 S Arlington, Suite A</b> <b>Akron, OH 44319</b>	<b>Lucy DiNardo, Staff Rep.</b> <b>FOP- LOC, Inc.</b> <b>2721 Manchester Rd.</b> <b>Akron, OH 44319-1020</b>
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by U.S. Postal Service, First Class Mail, on **December 7, 2007**

Copy of this Award was submitted U. S. Postal Service by First Class Mail to  
Director, Bureau of Mediation, SERB, 65 E. State St., Columbus, OH 43215-4213, on  
**December 7, 2007**

I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC 4117 and related SERB Rules and Regulations.

  
**John S. Weisheit, Conciliator**

**Date: December 7, 2007**

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