

2007 JUN 28 A 11: 56

**IN THE MATTER OF CONCILIATION
BETWEEN**

CITY OF ELYRIA

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CASE NO. 06-MED-03-0204

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AND

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**ELYRIA POLICE PATROLMEN'S
ASSOCIATION**

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OPINION AND AWARD

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JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE UNION

Robert M. Phillips, Esq.

FOR THE CITY

**Howard D. Heffelfinger
Robin L. Bell**

SUBMISSION

This matter concerns conciliation proceedings between the City of Elyria (hereinafter referred to as the City or Employer) and the Elyria Police Patrolmen's Association (hereinafter referred to as the Union or EPPA). The State Employment Relations Board (SERB) duly appointed the undersigned as conciliator in this matter. Conciliation proceedings were conducted on May 14 and May 29, 2007.

The conciliation proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the conciliation proceedings, this conciliator attempted mediation of the issues at impasse. Following the mediation session, the parties agreed that they would submit modified positions on the outstanding issues. The issues remaining for this conciliator's consideration are more fully set forth in this report.

The bargaining unit consists of all sworn police patrol officers. There are approximately eighty employees in the bargaining unit.

This conciliator in resolving the dispute between the parties by selection between each of the final settlement offers has taken into consideration the criteria set forth in Ohio Revised Code Section 4117.14(G)(6)(7). Therefore, this conciliator after carefully reviewing all of the evidence and arguments presented by the parties hereby submits his opinion and award with respect to each of the outstanding issues presented.

1. WAGES

The Union proposes wage increases of 3% effective July 1, 2006, 3% effective on July 1, 2007, and a 3% increase on July 1, 2008. The Employer offers wage increases of 2%, 2.5% and 3% to the Class A Patrolmen rate for a three year agreement. In addition, the City proposes that the Class C Patrolmen rate be increased by \$2,000, and the Class B Patrolmen rate be modified to be the mid-point between the new Class A and the new Class C rates. Finally, the Employer proposes that new patrol officers that are hired by the City with Ohio Peace Officer certification from an accredited training academy be paid a \$1,500 bonus in the twenty-sixth pay period and \$1,500 again in the fifty-second pay period after hire.

The EPPA contends that wages in the City of Elyria for patrol officers falls well below the average pay in comparable jurisdictions. With an entry level of \$38,272 and a top wage of \$46,272, the City of Elyria is behind the average for the three county areas of Lorain, Cuyahoga and Lake by over \$6,200 at the entry level and most critically nearly \$11,000 at the top level. The Union cites a memorandum from the Chief of Police who indicated that the City is having trouble recruiting new officers and that “the major issue...is pay.” The Union also presented SERB Benchmark Wage Data in support of its contention that the Elyria Police Officers are not paid at wages comparable to those in other communities. The Union presented evidence that the police department has recently lost several experienced patrol officers due to the relatively low pay.

The Union further points to the relatively high healthcare premiums which the bargaining unit members must pay. When one considers the increases in the annual deductibles, office co-pays and co-insurance, the medical cost for a top level patrol officer would be about 5% of his/her annual salary.

The Employer maintains that its wage proposal specifically addresses the concerns raised regarding the current relatively low entry level wage rate. Under its wage proposal, the City would have the ability to attract and retain qualified candidates. Again, the City proposes that the Class C patrolmen rate be increased by \$2,000 and that a \$1,500 bonus be provided for properly accredited new hires.

The City claims that its overall wage package would allow its patrolmen's wages to retain their relative ranking with respect to comparable jurisdictions. The Employer presented comparisons with eight other jurisdictions. The comparison indicated that for a ten year patrol officer, Elyria ranks fifth among the cited jurisdictions. The City further pointed out that its longevity pay which guarantees an officer a 1% increase in each year of service up to twenty years must also be taken into consideration here.

ANALYSIS – After a careful review of the evidence and arguments presented by the parties, this conciliator awards the Union's final wage proposal. That is, there is to be a 3% wage increase retroactive to July 1, 2006, a 3% increase effective July 1, 2007, and a 3% increase on July 1, 2008. In selecting the Union's final wage offer over that presented by the City, this conciliator has taken into consideration the evidence which

shows that the pay for police officers in Elyria is relatively low compared to other jurisdictions. As indicated in SERB's Benchwork Report for 2006, the City of Elyria's current entry level wage of \$38,272 and top wage of \$46,272 fall well below the average starting and top pay for police officers in the region. The City's comparables also show that the wages here are relatively low. Elyria's top patrolman's pay ranks near the bottom of the eight jurisdictions cited. Even when supplemental pay including longevity is taken into consideration, the starting pay as well as the wages for five and ten year patrolmen in Elyria fall below the average in the comparable cited communities.

Moreover as the Police Chief indicated in his memorandum dated November 22, 2006, the department is having a great deal of trouble recruiting new officers with the major issue being low pay. There was also evidence presented at the conciliation hearing that the department has recently lost several veteran police officers because of the relatively low pay. Although the City's final amended wage offer attempted to address the low pay for new hires, it did not in this conciliator's opinion provide for a reasonable pay increase for the more experienced members of the bargaining unit. Even if the longevity benefit is taken into consideration, the wages which EPPA members would receive under the City's proposal would still fall below the average of comparable jurisdictions. This conciliator would agree with the fact-finder's conclusion that the City's final wage proposal would be insufficient to stop experienced officers from leaving for higher paying positions elsewhere.

This conciliator has also taken into consideration several other factors in awarding the Union's position on wages. First, the EPPA's final amended wage offer is more in line with that recommended by the fact-finder herein. It should be noted that the fact-finder recommended wage increases of 3.75%, 3.75% and 3.5% in each of the respective three years of the Agreement. The Union's final wage offer would also be in line with the average wage increase granted to police units statewide as indicated in SERB's annual wage settlement report. The average wage increase granted to police units for 2006 was 3.23%. In contrast, the City's final amended wage offer of 2% the first year would actually be less than the increase in the Consumer Price Index for 2006. Finally, there is every indication that the City has the ability to finance the additional cost of the EPPA's final wage offer. The City claimed that it had a limited ability to pay. In that regard, the City Auditor indicated that tax revenue had declined slightly during the first three months of this year as compared to the prior year. However, this conciliator finds that the evidence presented by the City was insufficient to find that the City does not have the ability to fund the awarded wage increases. It was shown that the difference in the cost of the City's proposal and the EPPA's final offer would amount to approximately \$80,000 over the three year term of the Contract. Clearly when one considers the police levy of one-quarter of one percent as well as the department's overall budget, it becomes apparent that the City can afford to finance the additional cost of the EPPA's amended wage proposal.

A W A R D

With respect to wages, this conciliator awards the Union's final wage offer as more fully set forth below:

ARTICLE 12, WAGES

Effective July 1, 2006 – Three Percent (3%) increase.

Effective July 1, 2007 – Three Percent (3%) increase.

Effective July 1, 2008 – Three Percent (3%) increase.

2. SICK LEAVE

The Union proposes a modification to the Sick Leave Upon Retirement Provision whereby bargaining unit members hired after July 1, 1985 would receive pay at retirement equal to one-half the value of up to 210 days of accrued sick leave. For officers hired before July 1, 1985, they would receive full pay for up to 105 days plus fifty percent of the value of unused sick leave in excess of 105 days. The City proposes a modification to Section 18.9 which would allow for those employees hired after July 1, 1985 to receive up to one-third of the value of 210 days of the accumulated but unused sick leave and up to an additional one-half the value of the next seventy days of the accumulated unused sick leave.

The Union contends that its proposal would encourage bargaining unit members to utilize less sick leave which would thereby assist the Employer's efforts to reduce absenteeism. The Union presented comparables in support of its position.

The Employer maintains that its present two-tier system was negotiated twenty years ago in consideration for wage increases. While those wage increases have now compounded to the benefit of bargaining unit members throughout that time, the City has yet to see any benefit from the negotiated change in the language. At this time there are still nine employees in the bargaining unit who remain grandfathered under the old language.

ANALYSIS – This conciliator finds that the City’s proposed modification to the Sick Leave Upon Retirement Provision is reasonable and should be adopted. The City’s final offer enhances the benefit by providing for those employees hired after July 1, 1985 with an additional one-half the value of the next 70 days of their accumulated but unused sick leave. The City’s proposal also increases the maximum payout from the current 70 days to 105 full days pay.

The fact-finder in this matter did not recommend the change proposed by the EPPA for sick leave conversion at retirement. Like the fact-finder, this conciliator finds that there was insufficient basis established for the Union’s proposal to increase the payout at retirement for those hired after July 1, 1985 to up to one-half the value of 210 days of their accumulated but unused sick leave. Again, the current provision provides that the employees hired after July 1, 1985, are to receive up to one-third the value of 210 days of their accumulated but unused sick leave. While the comparables submitted do indicate that the sick leave upon retirement benefit should be enhanced, this conciliator finds that the City’s final proposal for the modification of this provision is the more reasonable of the two final offers submitted.

A W A R D

With respect to the Sick Leave Payout Upon Retirement Provision, this conciliator awards the City’s final offer as more fully set forth below:

ARTICLE 18, SICK LEAVE

Section 18.9. If an employee was hired by the City before July 1, 1985, he shall receive pay for one hundred five (105) days, plus fifty percent (50%) over one hundred five (105) days, of his unused sick leave in case of death, or permanent disability, or retirement, or if he resigns for a proven bona fide illness of himself or a member of his immediate family, or if he leaves employment for any reason after ten (10) years of continuous service. In case of death, permanent disability, retirement, resignation for a proven bona fide illness of an employee or a member of his immediate family, or if an employee leaves employment for any reason after ten (10) years of continuous service, those employees who were hired by the city on or after July 1, 1985 shall receive pay for up to one-third (1/3) the value of two-hundred ten (210) days of their accumulated but unused sick leave, ***and up to an additional one-half (1/2) the value of the next seventy (70) days of their accumulated but unused sick leave.*** No such employee shall receive more than ~~seventy (70)~~ ***one hundred five (105)*** full days' pay.

3. SENIOR PATROLMAN PROFICIENCY

The Union proposes a \$100 increase in the senior patrolman proficiency pay for 2006 and another \$100 increase in the third year of the Agreement. Under the Union's proposal, the senior patrolman proficiency pay would be increased to \$700 by the third year of the Contract. The Employer in its amended offer proposes to increase the senior patrolman proficiency pay by \$250 to the total amount of \$750 in the first year of the Contract.

The Union's proposal seeks to increase bargaining unit members' overall compensation. The Union points out that it has reduced its demand for a wage increase from what the fact-finder recommended but did so with the idea that certain other forms of compensation would be increased for patrolmen. This would include its requested increase in senior patrolmen proficiency pay.

The City's final offer of a \$250 increase for senior patrolmen proficiency pay amounts to over a 0.5% pay increase for those officers who qualify. The City is willing to raise the senior patrolmen proficiency pay by \$250 in light of the fact that the compensation paid under this provision is not subject to longevity percentage increase.

ANALYSIS – This conciliator has determined that the Employer's proposal with respect to senior patrolmen proficiency pay should be adopted. Under the City's proposal, the amount of senior patrolmen proficiency pay would be increased by \$250 in the first year of the Agreement to a total amount of \$750. This would amount to over a 0.5% pay increase for those officers who qualify. Senior patrolmen proficiency pay is

provided to officers who have completed three years of employment and who have not been suspended during the preceding twelve months.

It is important to recognize as the City points out that the \$250 increase in senior patrolmen proficiency pay is compensation that would not be subject to the longevity percentage increases provided for in the Agreement. The increase to \$750 for senior patrolmen proficiency pay will also serve to address the concerns regarding the retention of experienced officers. There was an indication that several experienced patrol officers have recently left the employment of the City due to the relatively low wages. The increase in senior patrolmen proficiency pay would allow the City to retain some of its most experienced patrol officers.

A W A R D

With respect to Senior Patrolmen Proficiency Pay, this conciliator awards the Employer's final offer as more fully set forth below:

ARTICLE 31, SENIOR PATROLMEN PROFICIENCY PAY

Section 31.2 Each patrolman entitled to the position of Senior Patrol Officer shall receive an additional Seven Hundred Fifty Dollars (\$750) per year, payable in the first pay period of July, as long as the Senior Patrol designation is maintained. Any patrolman entering the position during any calendar year, defined as June 1 to May 31, will be paid prorated for the initial year.

4. FIREARMS PROFICIENCY ALLOWANCE

The Union's amended proposal is that a new Professional Proficiency Allowance Provision be incorporated into the parties' Agreement which would provide for \$500 in proficiency pay for 2006, and \$1,000 beginning in 2007. The City's proposal is that there be a proficiency allowance in the amount of \$750 beginning in the first year of the Agreement.

The Union contends that its proposal beginning with a \$500 annual stipend in 2006 is less than comparable police departments who have proficiency firearms allowances. The Union cited the Euclid Police Department which has approximately the same department strength as providing for a proficiency allowance of \$5,300 per year. All officers are required to meet or exceed the state's annual certification firearms proficiency requirements.

The City has made its proposal in light of the fact that bargaining unit members must qualify with their duty weapons two times each year rather than the one time as required for a police officer to retain his peace officer certification. Therefore, the City is willing to provide a \$750 firearms proficiency allowance after the officer has qualified for the second time in the year.

ANALYSIS – This conciliator hereby awards the Employer's final offer with respect to firearms proficiency pay. Firearms proficiency certification is a statutory requirement for peace officers within the State of Ohio. As such, it is reasonable to

provide police officers with an additional stipend for their satisfactory completion of the firearms proficiency requirements.

This conciliator finds that the comparable evidence presented supports the more modest proposal for firearms proficiency pay presented by the Employer. Again, the City has proposed firearm proficiency pay in the amount of \$750 beginning in the first year of the Agreement. This would be in line with proficiency pay of \$500 provided in the City of Lakewood which is one of the comparable communities cited. The \$750 firearm proficiency pay would amount to about a 1.5% pay increase for those officers who qualify. It was shown that patrol officers must qualify twice per year and for that reason the language proposed by the Employer regarding this provision is acceptable. In contrast, this conciliator does not find any basis in support of the Union's proposal to increase the firearms proficiency pay to \$1,000 in the second year of Agreement. Again, it should be emphasized that this will be a new provision which will serve to address the concerns raised regarding additional compensation for the more experienced patrolmen.

AWARD

With respect to Firearm Proficiency Pay, this conciliator awards the City's final offer as more fully set forth below:

NEW ARTICLE, FIREARMS PROFICIENCY ALLOWANCE

Section 1. All bargaining unit members shall be required to qualify twice yearly with duty weapons as mandated by the Employer or by the State of Ohio in order for employees to maintain their law enforcement certification.

Section 2. Upon passage of the firearms qualifications for the second time in each calendar year as required by the Employer, those Employees who meet or exceed the certification requirements will be given a proficiency allowance in the amount of Seven Hundred Fifty Dollars (\$750.00). Satisfactory qualification will be evidenced by a letter of qualification from the range officer or training officer to the employee or the City. Payment of the firearms proficiency allowance shall be made by the second pay period in November.

6. SUPPORT CAR PROGRAM

The Union proposes a new provision whereby all patrol officers residing within Lorain County with over two years of service would be permanently assigned support cars. An exception would be made for newly hired officers who would receive a support car after five years of service. Under the Union's proposal, if the City failed to provide an eligible employee with a support car, the employee is to be paid a weekly stipend at the IRS Annual Lease Value Table Rate. The Employer is opposed to placing the support car program into the parties' Agreement.

The EPPA argues that officers who take home support vehicles would be able to respond faster to emergencies thereby increasing public safety. Moreover, these officers who are assigned permanent vehicles take a greater interest in their maintenance and upkeep. The Union points out that a number of jurisdictions including the Lake County Sheriff's Office have similar programs.

The Employer contends that there would be no reason to expand the current program to patrol officers living outside of city limits. This defeats the purpose of community support cars which is to increase officer visibility within the City of Elyria thereby discouraging crime within the City. Moreover, the Union's proposal would require the purchase of additional patrol cars.

ANALYSIS – This conciliator has determined that the City's final offer with respect to the support car program is to be awarded. There was insufficient basis established for allowing officers who live outside the City to take home support cars. As

the Employer noted, the purpose of providing officers living within the city with support cars is to increase their visibility so as to discourage crime within the City of Elyria. The Union's proposal would expand the program to include those officers who live outside of city limits with support cars.

Moreover, the evidence showed that take home vehicle provisions are not commonly included in safety force agreements. Indeed, there were no agreements cited which included the kind of support car provision as that proposed by the Union. Also, the fact-finder did not recommend the adoption of the Union's proposal.

AWARD

With respect to the Support Car proposal, this conciliator awards the Employer's final offer.

SUPPORT CAR PROGRAM – No new Support Car Article.

7. ME-TOO

The Union proposes a “Me-Too” provision which would allow the EPPA an opportunity to reopen negotiations regarding any “economic enhancements” provided to other safety force bargaining units for the 2006-08 Contract term. The Employer is opposed to both the Me-Too article and any entitlement for the Union to reopen negotiations.

The Union contends that the firefighters already have a more competitive overall compensation package than the police bargaining unit. Therefore, the EPPA should be permitted to reopen negotiations if the firefighters receive any enhanced economic benefit greater than that provided to the police unit.

The Employer points out that it has five additional safety force bargaining units in the City and each unit has different priorities for its members. The Employer believes that each bargaining unit must negotiate independently for itself and not rely upon the negotiations of another bargaining unit. The EPPA’s proposal defies the very essence of the give and take of true collective bargaining.

ANALYSIS – This conciliator must adopt the Employer’s final offer which is that there be no Me-Too article. There simply was no basis established for such a provision. As the fact-finder noted, rather than working towards stable labor relations between the parties, Me-Too language would increase the tension which exists between the safety forces. Moreover, it is apparent that no bargaining unit should be able to automatically receive all of the so-called enhanced economic benefits provided to another

unit. As the Employer correctly stated, each bargaining unit must be able to negotiate independently for itself.

A W A R D

With respect to the Me-Too proposal, this conciliator does not adopt the Union's position for this new article.

ME-TOO - No new Me-Too provision.

CONCLUSION

In conclusion, this conciliator hereby submits the above referred to awards on each of the outstanding issues presented for his consideration. It should be noted that the Union prior to the conciliation hearing withdrew its proposal for a new article regarding pension pickup. Further, this conciliator incorporates into his award all of the tentative agreements previously entered into by the parties.

JUNE 13, 2007



JAMES M. MANCINI, CONCILIATOR