

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

STATE EMPLOYMENT  
RELATIONS BOARD  
2007 FEB 20 A 9 55

<b>BETWEEN</b>	<b>CASE NO: SERB 06-MED-08-0832</b>
<b>FRATERNAL ORDER OF POLICE, LODGE # 107</b>	<b>CONCILIATOR: JOHN S. WEISHEIT</b>
<b>V</b>	<b>HEARING DATE(S): January 12, 2007</b>
<b>City of Oakwood, Ohio</b>	<b>AWARD ISSUED: February 15, 2007</b>

**REPRESENTATION  
by**

<u><b>Employer Representatives</b></u>	<u><b>Union Representatives</b></u>
Jeff Mullins, Esq. Jay Weiskircher, Ass't City Mgr.- Principal Rep.	Peter Rakay, Esq. John McCalister, Pres.-Principal Rep.

**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 Oakwood, Ohio, hereinafter called the “City” and/or the “Employer” , recognizes the Fraternal Order of Police, Lodge #107 , hereinafter called the “FOP” and/or the “Union”, as the collective bargaining agent for the Public Safety Officers, hereinafter referred to as PSO’s.

The Employer is located near Dayton, in Montgomery County, Ohio. The City consists of about 9,200 residents. The City employs about 90 employees. The PSO’s are a cross-trained safety force, trained and certified to serve as Police, Fire and EMT. There are 25 Officers employed at this time. This is the only such structured safety force in Ohio and 1 of about 40 in the United States.

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. While said procedure resulted in the tentative agreement of a number of issues, not all issues were resolved and the matter was then moved to Fact Finding. The Fact Finder’s Recommendations were not approved by both parties and the matter was then moved to Conciliation, as provided under ORC 4117. While mediation and fact finding did not resolve all issues at impasse, it did significantly reduce the number of issues that were put before the Conciliator. Prior to the Conciliation Hearing, the parties met and tentatively agreed to a number of issues. This reduced the number of issues remaining in dispute to two: 1) Wages and 2) Medical Insurance Contribution of the bargaining unit members.

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 January 12, 2007, at Kettering, Ohio. At the Hearing, the party representatives presented testimony and documents regarding their respective positions on the outstanding unresolved issues. The Hearing was adjourned after the parties had indicated they had nothing additional to submit on behalf of their position, and acknowledged that they had sufficient opportunity to present such facts and documentation to support their respective positions.

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.

This Report is based on facts provided in document and testimony introduced at the Hearing and in keeping with mutually agreed alternate dispute provisions of the parties and the statutory consideration cited above.

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

### **Issue #1. Article 6. Wages**

#### **Union's Final Position at Conciliation**

**Section 6.2- 5% across the Board increase at each premium base step from October 26, 2006 to October 26, 2007; 5% across the Board at each premium step from October 27, 2007 to October 27, 2008; and 5% across the Board at each premium step from October 28, 2008 to October 28, 2009, with appropriate commensurate changes in the annual aggregate compensation and average uniform biweekly pay reflecting the increases across the board for each step for all three years.**

The Union revised its position at Conciliation to that recommended by the Fact Finder. It notes that for the past 25 years the PSO's have attained an approximate 5.5% base wage annual increase. It further argues the PSO's hourly rate of pay is relatively low resulting from the 24 hours on 48 hours off work schedule resulting in 2600 hours worked annually.

The FOP notes that all PSO's are cross trained, certified, and perform police, fire, and EMT duties. It argues that this unique safety force, being the only such force so structured in Ohio, does not reasonably provide for valid wage comparability to the more traditional separate safety forces. The Union argues that the work schedule in place not only provides a very high level of a trained safety force, but also provides the Employer a significant cost savings in the course of providing safety services to the community.

The FOP notes the City does not argue an inability to pay. It further contends that based on the hours worked, the high level of training, past history of wages granted and cost of living, the wage increase sought is "fair by any standard".

### **Employer's Final Position at Conciliation**

**The City proposes a 4%, wage increase effective 10/27/06, 4%, effective 10/27/08, 4%, effective 10/27/09, at each step.**

The Employer agrees with the three factors raised routinely by the Union, namely; A) the fact that historically they received a higher wage increase than other City employees and external comparable safety forces; B) the City has the ability to pay; and C) the Public Safety Officers' function is unique. The City contends that its position of a 4% wage increase is more appropriate at this time.

The Employer acknowledges it sought to raise the base rates of all its employees in the early 1990's and achieved that objective in the mid 1990's. It contends it has since focused on maintaining that relationship without expanding the gap between the different City employee classifications and that of similarly situated employees in other jurisdictions. It contends there was a marked decline in annual wage increases for the safety forces and better reflected the types of increases awarded or negotiated in comparable jurisdictions.

The City reasons that the acceptance of the Fact Finder's recommended 5% wage increase will set the future wage rate for Public Safety Officers (PSO's) to receive an inherent right to the same rate of increase ad infinitum. It also contends the raise sought by the Union would

exacerbate the wage disparity between the PSO's and the City's other employees and public safety officers in other jurisdictions. The City argues that the "uniqueness" factor of the PSO's has been recognized and made to a point that such status has now exceeded worth by excessive pay rate increases. This practice, the Employer contends violates a fundamental concept that applies to all employers and employees. The City further argues that, despite its ability to pay the Union demand, circumstances of its financial condition do not justify the continuation of providing above average wage increases.

#### **Issue #2 Article 15 Hospital and Medical Insurance**

**Union's Final offer - Section 15.4 Second and third sentences deleted and replacement language reads "Employees shall be required to contribute \$68.88 towards the monthly health insurance premium during each of the first two years of the Agreement and \$91.84 during the third year of the Agreement."**

The Union contends that Fact Finder Kosanovich's recommendation was designed to "sell" the increase in the PSO's contributions to both parties. It contends the City position is designed to offset the effect of any wage increase.

**Employer's Final Offer - Section 15.1 Each employee shall be provided with group hospital, medical care, drug, and vision insurance at the same benefit coverage level as those provided to the city's management and office employees.**

**Effective October 27, 2006, employees covered herein shall begin contributing 7.5% towards the cost of the monthly health insurance premium. Effective October 27, 2007, employee contributions will increase to 10% of the monthly health insurance premium or \$90.00/month for a family policy, whichever amount is less. Effective October 27, 2008, employee contributions shall equal 10% of the monthly health insurance premium or \$105.00/month for a family policy, whichever is less. During the term of this Agreement, employees covered herein shall not pay more towards the monthly cost of health insurance benefits than the city's management and office personnel.**

The City argues that in the last cycle of bargaining it attained, for the first time from the PSO's, a contribution in the payment for hospital and medical insurance benefits. The City believes it paid a high price for the right to require the contribution from the bargaining unit. It cites that all other employee groups, including three represented by unions, already pay 10% contribution for this benefit.

The City contends that Fact Finder Kosanovich moved too slowly in the implementation of the 10% contribution in his recent Award.

## **CONCILIATOR'S DISCUSSION & DETERMINATION**

### **GENERAL**

Since the Fact Finding Hearing and prior to the Conciliation Hearing, the parties reached agreement to five issues. Said issues were recorded in the Union's pre Conciliation Hearing Position Statement at pages 7 and 8, and acknowledged correct by both parties. The issues addressed were 1) Section 6.2 regarding Paramedic Certification rate of pay being increased to \$800 per year; 2) Section 9.6 Vacation change "twelve (12) twenty-four hour workdays to thirteen (13) twenty-four hour work days"; 3) Section 10.1 change "eleven (11) extra days off" to "twelve (12) extra days off"; 4) Section 11.4 the use of sick leave (specific language as agreed to by the parties and reflected in the Union's Pre-Conciliation Hearing Position Statement; and 5) adding paragraph 10 in Section 21.2 and the addition of a second paragraph to Section 21.3, also set forth in the Union's said position statement.

The above referenced five issues, all other issues tentatively agreed to, and language carried forward from the preceding collective bargaining agreement, in the course of the collective bargaining process, are directed to be included in the successor agreement.

The remaining unresolved issues to be addressed in Conciliation are the following two (2) issues: 1. Wages & 2. Medical and Health Insurance contributions of the PSO's.

### **ISSUE #1 ARTICLE 6 WAGES**

The parties reflected on their bargaining history in an extensive degree both in their respective Conciliation Position Statement as well as in their oral presentation at the Conciliation Hearing. Their bargaining history dates many years prior to 1984, and the establishment of the Ohio Public Employees Collective Bargaining Law (ORC 4117). The statute provides that the resolution of the issues at impasse in bargaining for public safety forces are ultimately to be resolved through Conciliation. Said procedure is to be final and binding. Further the statute provides the Conciliation is to be made based on the "last best offer-issue by issue". While the statute provides alternatives to some conciliation procedures, the parties did not authorize any such modifications in this instant case.

In the course of making a determination on these two unresolved issues, review focused significantly on the parties' Conciliation Position Statements, oral arguments offered at the Hearing, and Fact Finder Kosanovich's Fact Finding Report and Recommendation issued November 22, 2006. Such materials usually contain the most significant information in giving



direction to the Conciliator's findings and final determinations. In this case the Conciliation Award of Conciliator Frank Keenan, issued December 30, 2003, received a significant amount of attention and its influence was used by each party to support their respective arguments.

In addition to taking into consideration ORC 4117.14(C)(4)(e) previously cited in this Award, the Fact Finder's recommendation is one of the documents generally used in reaching a determination by a Conciliator.

A common practice in Ohio Conciliation determination is to favor the recommendations set forth in the Fact Finding report. Such weight is generally honored, unless such is found to be based on erroneous facts or absent rational and reasonable judgement in reaching the stated position. Such a practice in interest arbitration provides a greater degree of consistency of the Conciliator when making his/her determination of issues and avoids sending a conflicting interpretation to the parties.

The Union's final position on each issue before this Conciliator reflects the recommendation stated in the Fact Finder's Award. The Union and Employer acknowledge that historically, wage settlements for the bargaining unit are about 5.5%. Since 1984, the majority of the wage settlements resulted in a third-party recommendation/determination. It is further noted that all such third-party settlements involved like or similar issues at impasse and a number of different neutrals were used as Fact Finders/Conciliators over the course of the many years.

The 24/48 hour work schedule of the PSO's results in greater number of base hours worked annually than the typical 40 hour work week. The fact that all PSO's are cross trained and provide police, fire, and EMT duties is seen as a significant factor in this instant situation. Being so trained allows for greater flexibility and a higher degree of service than one would expect to find in a traditional safety department work force. No details were offered regarding the safety force numbers in a similar size city or employment situation. It is reasonable to conclude that the staffing of three separate safety departments would require a greater number of employees to meet the same service level as provided under the program that has been applied in this setting for these many years.

The 24/48 hour work schedule seems to benefit the City as well as the PSO's. This Conciliator concurs with Fact Finder Kosanovich regarding the absence of valid wage comparable to the more common separate component safety force. The fact that this is the only such city in Ohio using this structure and only some 40 cities in the United States have a similar structure, makes such comparables invalid and of little influence.

The parties concur there is no inability to pay. Thus, the argument focuses on appropriateness of the wage for the skills required and the responsibility assigned. The Employer seeks to limit the wage increase to avoid expanding the gap between PSO's and other City employees and similarly situated employees in comparable jurisdictions. No persuasive evidence is offered to support a correlation of the PSO's wages to that of other City employees. No convincing evidence has been offered regarding wages under the current structure to those in other more traditional structured jurisdictions.

Fact Finder Kosanovich appears to have offered a reasonable compromise wage settlement. No inherent right is found in his recommendation that would require an annual 5% wage increase beyond the terms of this Contract.

#### **DETERMINATION-ISSUE #1**

It is determined that the FOP position at Conciliation should be included in the Contract.

#### **Issue #1. Article 6. Wages**

#### **Union's Final Position at Conciliation**

**Section 6.2- 5% across the Board increase at each premium base step from October 26, 2006 to October 26, 2007; 5% across the Board at each premium step from October 27, 2007 to October 27, 2008; and 5% across the Board at each premium step from October 28, 2008 to October 28, 2009, with appropriate commensurate changes in the annual aggregate compensation and average uniform biweekly pay reflecting the increases across the board for each step for all three years.**

#### **ISSUE #2 ARTICLE 15 MEDICAL AND HEALTH INSURANCE**

It is significant that PSO's, for the first time, were confronted with making a contribution toward payment of the Employer's Medical and Health Insurance. Such was the result of a determination by Conciliator Frank Keenan in his Conciliation Report issued December 30, 2003. He introduced a "hard cap" contribution of \$40.50 monthly contribution rate, roughly 5% of premium costs. Fact Finder Kosanovich, in this round of bargaining, recommended a first and second year employee contribution of \$68.88 monthly, about 7.5% of the annualized premium of (\$11,021), and in year three, the employee would contribute \$91.85 (10% of the annualized premium in 2006).

The medical and health insurance compensation recommendation by Fact Finder Kosanovich is determined a reasonable compromise offer and addresses the significant points raised by each party and are in line with the recommended wage for the successor Contract.

### **SUMMARY**

The position of each party represents a degree of concession in the course of reaching agreement in this instant case. The Conciliator is without authority to modify the final position taken by the either party as its final position of each remaining issue.

Though the parties do not argue the ability to pay, there is a strong economic tie expressed in such a relationship to the remaining two unresolved issues in this case.

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 positions put forth by the FOP.

### **DETERMINATION - ISSUE #2:**

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

#### **Issue #2 Article 15 Hospital and Medical Insurance**

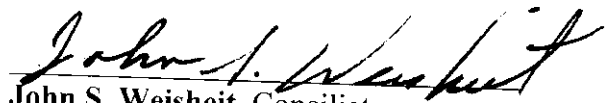
**Union's Final offer - Section 15.4 Second and third sentences deleted and replacement language reads "Employees shall be required to contribute \$68.88 towards the monthly health insurance premium during each of the first two years of the Agreement and \$91.84 during the third year of the Agreement."**

## TOTALITY OF AGREEMENT

- This will affirm the foregoing report, consisting of **13 pages**, includes the findings and determinations set forth in this Award by the below signed Conciliator.
- 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 Contract shall include all terms reached by tentative agreement by the parties prior to Conciliation, and will include the determinations set forth in this Award.

To the best of my knowledge, said Report and its included recommendations complies 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 February 15, 2007.

  
John S. Weisheit, Conciliator

## 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>Jeffery Mullins, Esq.</b> <b>TAFT, STETTINIUS &amp; HOLLISTER LLP</b> <b>110 N. Main St. Suite 900</b> <b>Dayton, Oh 454021786</b>	<b>Peter Rakay, Esq.</b> <b>RAKAY &amp; SPICER</b> <b>11 W. Monument Bldg. Suite 307</b> <b>Dayton, OH 45402</b>
--	---

by U.S. Postal Service, First Class Mail, on **February 16, 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 **February 16, 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: February 16, 2007**