

**CONCILIATION REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
July 11, 2007**

STATE EMPLOYMENT
RELATIONS BOARD

2007 JUL 11 A 11: 38

In the Matter of:

**FRATERNAL ORDER OF POLICE
OHIO LABOR COUNCIL, INC.**

Employee Organization

-and-

CITY OF READING (City)
Employer

**CASE NO: 06-MED-09-1005
06-MED-09-1006
06-MED-09-1007**

APPEARANCES

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.

Barry Gray, Staff Representative
Scott Snow, Lieutenant Representative
Darin Lunsford, Patrol Representative
Peggy Peratt, Dispatcher Representative

CITY OF SPRINGBORO (City)

Paul Berninger, Attorney, Wood and Lamping LLP
Robert Bemmes, Mayor
Robert Boehner, Safety Service Director
Timothy Hoerst, Deputy Auditor

Conciliator: Howard Tolley, Jr., Professor, University of Cincinnati

Introduction

In three negotiating sessions for a three-year successor agreement the parties agreed to continue 25 articles unchanged, tentatively agreed to change three others, failed to reach agreement on three issues, and formally waived the provisions of 4117.14(G)(11) so that subsequently rates of compensation would be retroactive to January 1, 2007. SERB fact finder Howard D. Silver conducted a hearing on January 26, 2007 that resulted in a mediated agreement on two outstanding issues; on the final unresolved issue his report recommended annual wage increases of 3% for three years. On March 8, SERB appointed this Conciliator to conduct a hearing and issue a final award.

The FOP represents 4 Dispatchers & Clerks (Unit A), 13 full-time Patrolmen (Unit B) and 5 full-time Lieutenants (Unit C). Terms negotiated for the patrolmen are extended to members in the other two units. The City of Reading, with about 11,000 residents, employs seven full time unrepresented individuals as well as represented members of AFSCME and RCFA represented firefighters. The Employer and FOP/OLCI have been parties to collective bargaining agreements since 1984 (95-REP-04-0130). Reading voters elect a Mayor, Treasurer, City Auditor, and City Council members who hold compensated, part-time positions.

The parties exchanged and submitted pre-hearing position statements including final offers five days prior to the hearing, The FOP proposed increases of 3.5% and 4% in the first two years and a wage reopener for the final year and included proposed contract language in accord with the SERB Conciliation Guidebook. The City initially proposed the 3% annual increase recommended by the fact finder, and two days prior to the hearing submitted a revised final offer providing for a wage reopener in the final year following 3% increases in the first two years. The FOP objected that the city had not included contract language in its submission, and the conciliator requested that both parties provide their final proposed wage article in electronic text.

The parties offered supporting documents at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

- 1) Past collectively bargained agreements, between the parties
- 2) Comparison of 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, and 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; and,
- 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 the public service or in private employment.”

Conciliation Hearing: June 29, 2007, Reading Municipal Building

The conciliation hearing was conducted from 9 a.m. until 1 p.m. with presentation of evidence and argument on Article 12, Wages.

Ability to Pay

City Position:

The employer's representative characterized Reading as among the poorest of the county's blue-collar municipalities with an exodus of family homeowners and increase in rentals. The city lost 6.2% of its population in the 1990's and an additional 8.6% from 2000 to 2005. The income tax bureau reported in January 2007 that of 5,323 active individual accounts, approximately 2,300 live in rental units, 43.2%. Median household income of \$39,140 is less than half the income in county suburbs such as Evendale and Montgomery where over 55% of residents hold college degrees in contrast to 15.9% in Reading. Deputy Auditor Timothy Hoerst testified that The Archdiocese of Cincinnati completed a study to determine the viability of parish schools in the area and forecast a bleak future.

From 2001-2005 city expenditures increased 12.1% while revenues increased by only 9.1%. Recurring budget deficits virtually eliminated Reading's cash reserves, as the city delayed payment of bills in order to meet payroll. City Mayor Robert Bemmes, a lifelong Reading resident, described the acute budget crisis that required painful staff reductions, salary cuts, and neglect of city services and facilities when voters repeatedly rejected tax increases.

In mid-2006 voters responded to urgent appeals by approving an increase in the income tax from 1.5% to 2% retroactive to January; that one-third increase is projected to generate an additional \$1.3 million in annual revenue. A portion of the new revenue is for street repair. In March 2007 City Council created a Reserve Balance Account/Special Appropriating Fund with 1.5% of all money shifted from the Earnings Tax Fund to the General Fund; \$48,000 of the \$3,200,000 transfer for the first five months of 2007 was made in June.

In accord with good business practice, City Council seeks a reserve of 10% to 15% of annual general fund operating expenses. The city expects the state to mandate a significant increase in pension contributions and faces increasing health care costs. Although the City needs to rebuild its reserves by holding the line on pay increases for represented employees, its final offer for this conciliation accepted the Fact Finder's recommendations for 3% annual increases in 2007 and 2008, and the employer has also accepted a wage reopener for 2009 when anticipating a possible improvement in its financial situation.

FOP/OLCI Position:

The union believes that significantly increased income tax revenue since January 2006 enable Reading to pay the estimated \$20,000 in additional cost that would be required under its final offer of 3.5% and 4% increases in 2007 and 2008 and quotes from the January report: "the fact finder can be easily persuaded that 3.5% or even 4.0% is supported by the evidence in the record." When asked by the union representative whether the city could promptly pay a new bill of \$20,000, Deputy Auditor Timothy Hoerst responded that the city was no longer experiencing difficulty meeting any expenses when billed.

The FOP also challenged the city's analysis of its recent budget difficulties by noting that ample unencumbered funds that were available for transfer remained in 2 accounts outside the depleted General Fund at the end of each year – The City Earnings Tax and Sewer Service Fee Funds. The union provided data from the Ohio Auditor for 2004 and 2005 showing that the General Fund had significantly more unencumbered money than the amount reported in the

city's To Date Fund Report for month 12, and provided a report showing income tax receipts up by nearly 50% for the first five months of 2007.

A published newsletter by the Mayor and quotations carried by the press all noted the city's solid financial position and exciting prospects. Reading has acquired several properties for development with external grants to promote job growth in the city. In addition to a profit on resale in three to five years, new employers will bring additional workers who contribute more income tax revenue. In response to the city's claim of jobs lost when a major employer laid off workers in the 1990s, the FOP demonstrated that the same buildings were now used by new employers who had a comparable number of employees paid higher salaries. The FOP noted that rather than cut administrator's pay, the city had replaced more highly paid senior individuals who departed with new employees who only qualified for a lower salary.

Refuting the city's argument that citizens would feel betrayed by using increased taxes to grant the increases requested by the FOP, the union provided Campaign literature for the income tax increase that urged a Yes vote "for our safety and security." Based on Reading's claim of inability to pay during negotiations for its 2003-2006 contract, the FOP accepted a 2% pay raise in the first year. The two other bargaining units and unrepresented city workers were nevertheless granted significantly higher pay raises, and so the city's current arguments and evidence are suspect.

Discussion

Using data provided by the employer, the conciliator prepared Table I to estimate the size of the unencumbered reserve Reading has for General Fund expenses. The Year to Date Fund Report for December appears to understate the actual General Fund reserve, because additional reserve funds are available for transfer from the Earnings Tax and Sewer Service Funds. The conciliator used the higher total for unencumbered end of year balance found in the General Fund FY 2007 Tax Budget under the column headed "Actual" for 2004 and 2005 and used the FY 2008 Tax Budget for the Actual in 2006 and the estimates for 2007 and 2008. Those documents provide no data on what if any additional money might be available in the other two funds.

In addition to the General Fund Balance based on actual cash transactions during the year, the Table includes the Ohio Auditor's higher number based on the accrual method, but the Conciliator did not use the Auditor's numbers in calculating what per cent of expenditures the city had in reserve. The conciliator did attempt to estimate how much the city would have in the newly created Reserve Balance/Special Appropriating Fund for 2007 and 2008 by taking 1.5% of the income tax transfers to the General Fund and adding that amount to the estimated unencumbered General Fund balance.

Based on that methodology, the city appears well on its way to reestablish a reserve of at least 7.8%, and possibly to reach the 10% target this year. According to a spreadsheet the city provided to the Conciliator at the hearing, as of June 29 the General Fund had an unencumbered balance of over \$1 million, with an additional \$481,918 in the Earnings Tax fund. Based on data available in January, the fact finder considered reasonable pay increases of 3.5% and 4.0%, but cautiously recommended 3% raises. Using data on tax revenue through June 29 the conciliator concludes that Reading clearly has the ability to pay the 3.5% and 4.0% raises sought by the FOP.

TABLE I

Year End Actual + 2007-08 Estimated Unencumbered Fund Balances as % of Annual Expenditures

Year	General F Annual	General F Accrual	Special Reserve	Tax Earnings Sewer Fee	Total Balance	Expenses	Per Cent
2004	315,061	251,905		?	315,061	6,261,643	5%
2005	55,764	353,696		?	55,764	6,346,783	0.9%
2006	600,000			?	600,000	6,534,204	
2007	501,450		85,500	?	586,950	7,598,000	7.70%
2008	523,550		94,050	?	617,600	7,925,100	7.80%
6/29/07	1,099,746			481,918/180,425			

Actual General Fund Accrual balances from Ohio Auditor's reports, FOP Exhibit #1

Actual + Estimated Annual balances and expenses from City Exhibit #5 and FY 2008 Tax Budget

Comparable Reading City Pay Increases

City Position

The employer's representative offered several reasons to explain why the FOP had received a lower pay raise in the 2004-2006 agreement than other city employees. First, a new administration discovered an error in the computation of prior pay increases granted in earlier agreements. For each contract the parties had agreed to a per-cent increase in the base. Prior to computing the new base, the employer had mistakenly added to the base the shift differential, currently \$650, thus improperly adding in the new base a per-cent of the shift differential. The low 2% increase for 2004 thus helped correct for ten or more years of erroneous raises.

Second, the FOP enjoys an extraordinary array of supplementary economic benefits well beyond those received by other city employees – most importantly a 9 % pension pick up that should be recognized as an addition to base salary.

Third, the city regularly faces difficult, competing demands from the firefighters and FOP for preferential or at least comparable treatment for work schedules and responsibilities that are quite different. In each round of bargaining, one union or the other feels aggrieved.

FOP Position

First, Lieutenant Scott Snow noted that the computation error was not discovered until after completion of negotiations, and the union insists it agreed to the 2% raise for 2004 based on the city's claim of hardship,

Second, the union strongly objected to the city's attempt to consider its pension pick up as part of the base, citing contract Article 12, Parag 3: "It is established that contributions made on behalf of the individual, . . . shall not be considered additional salary or wage." The employer pension pick-up of the individual share was negotiated in the very first FOP contract of 1984 when the union members in return went for two years with no pay increase.

Third, the employer's representative in this conciliation has previously acknowledged that police officers are less well compensated than its AFSCME clerical employees in a July 21, 2006 pre-hearing statement noting "the city's police officers . . . are among the region's lower paid emergency responders." For 2004-2006 AFSCME received average increases of 3.66%, RCFA or 4.43% and the FOP/OLCI of 2.6%, while unrepresented employees received 3%. Since 2005, elected, part time employees have received considerably higher increases.

Discussion

The conciliator concludes that the modest pay increases in the prior agreement were unrelated to earlier computation errors and that the pension pick up should not be considered part of the patrolman's base. Table II illustrates that during a period of financial difficulty the FOP received smaller increases than all other city employees. That analysis offers further support for the FOP position in this conciliation.

**TABLE II
COMPARATIVE ANALYSIS OF READING ANNUAL INCREASES**

	<u>Years</u>	<u>Annual Increase</u>
RCFA	2004-2006	4/4/5.3
AFSCME	2004-2006	3/3/5
Unrepresented FT	2004-2007	3/3/3/3
Elected Part Time	2004-2007	1.6/3.7/4.7/4.6
FOP	2004-2006	2/3/3

Comparable Jurisdictions' Patrolman Compensation and Increases

City Position

For purposes of comparison, the employer identified 14 Hamilton County cities with patrolman represented by the FOP and populations of less than 20,000. In addition to Reading, two of those cities also picked up the employee's individual pension contribution that the city added to the base for purposes of comparing top step pay for police officers in 2006. Using that method, Reading ranked six out of the fourteen jurisdictions. The city also provided the conciliator with the SERB benchmark reports dated June 19, 2007 for both compensation and wage increases.

The city also provided extensive detail of other economic benefits enjoyed by Reading police officers of considerable expense to the employer – shift differential, \$650, longevity increases \$35/year, weapons allowance, \$200, supplementary pay for holiday work, double time for overtime on off days, and an extraordinary severance package allowing conversion of 1440 hours of sick leave for a benefit of \$38,305, as well as a nominal 10% contribution to rapidly increasing health care premiums.

The city asked the conciliator to recognize that “public safety employees stand at the top of the wage and fringe benefit scale” and lower income taxpayer's legitimate interest in restraining further disparities. From 1966 to 2005 FOP salary increases exceeded 49% while other Reading employees received increases much closer to the increase of 26% in the consumer price index.

FOP Position

The union included in its list of 18 comparable jurisdictions in Hamilton County two townships with over 30,000 residents and Norwood with a population of 21,000. In that list Reading ranked 11th based on a comparison of top base salary. The FOP pointed reiterated that the pension pick up could not be considered as an addition to base salary based on the express language in Article 12, paragraph 3, and the forfeit of two years of pay raises to obtain that benefit in the 1980s. The FOP also forcefully noted that the city's representative had acknowledged Reading police “are among the region's lower paid emergency responders” in a submission for the 2006 AFSCME fact finding hearing.

The union systematically explained how most of the non-salary economic benefits noted by the city were granted prior to the first collective bargaining agreement in 1984, and offered tables showing the extent of similar benefits offered to police in the comparable jurisdictions. Since all of the non-salary articles in the agreement had been accepted by the employer, the FOP considered it inappropriate to heed the employer's use of those items in the conciliation.

Discussion

In preparing Table III of comparable jurisdictions, the conciliator has listed 15 Hamilton County cities with populations under 20,000 and used the top base salary for 2007 and data on annual increases from the SERB Benchmark report dated June 19, 2007 provided by the city. For Reading, the \$650 shift differential was added to the base, placing the city 9th of the 15; Deer Park is 8th, the median, \$300 above Reading. Although the conciliator found it inappropriate to add the pension pick up to the base, doing so merely raises Reading to the median, with almost identical rates to 2 other cities.

In comparing annual pay increases the Reading FOP ranks 9th out of 14, well below significantly higher pay raises in many neighboring jurisdictions. In 10 of 13 cities police officers base pay is well above median household income. The conciliator assumes that over the course of a career, more senior employees should receive pay raises greater than the increase in

the CPI rather than remaining at the same income level. While the city encourages the conciliator to depart from the pattern of generous wage increases for public employees, the Ohio Public Employees Bargaining Statute in Rule 4117-9-05 obligates a SERB conciliator to support comparable benefits for those doing similar work. That analysis offers final support for the FOP position in this conciliation.

TABLE III
ANALYSIS OF 15 COMPARABLE JURISDICTIONS PATROLMAN

	<u>City</u>	<u>Top Annual Rate*</u>	<u>Annual Increase**</u>	<u>Household Income***</u>
1	Sharonville	63,107	3.75/3.25/3	47,055
2	Blue Ash	61,152	4/4/04	61,591
3	Madeira	61,091	6/6	
4	Montgomery	60,819	4.9/4.5/3.7	89,224
5	Springdale	60,236	4/4/3.5	44,732
6	Forest Park	59,629	6/4.25/4.25	49,298
7	Silverton	58,216	3.5/3.5/3.5	
8	Deer Park	56,017	4/3.5/3.5	39,692
9	Reading	55,322	2/3/03	39,140
10	Loveland	55,281	6/4/04	52,738
11	Wyoming	54,064	1/1/02	88,241
12	Cheviot	52,315	3.5/3.5	35,150
13	North College Hill	52,228	2.75/2.75	37,776
14	Mount Healthy	52,225	2.5/3.5/2.5	32,982
15	Harrison	51,209	3/3/02	46,107

*Current Top Rate From City Exhibit #7 SERB Benchmark Report 6/19/07.

**From City Exhibit #8 SERB Wage Increase Report 6/19/07.

***Median, FOP Exhibit#9 from 2000 Census

Remaining Articles

All articles unopened by the parties and those Articles tentatively agreed to and resolved by mediation at the Fact Finding hearing should be included in the successor agreement with this award retroactive to January 1, 2007.

SUMMARY OF AWARD

On the issue of wages the Proposal of the FOP is awarded.

Signed and dated this 11th day of July 2007 at Cincinnati, Ohio.



Howard Tolley, Jr., Conciliator

The Fraternal Order of Police, Ohio Labor Council, Inc., presents the following positions with regards to the unresolved issues listed below, also included are proposals in contract language.

****ARTICLE 12 WAGES****

The Fraternal Order of Police, Ohio Labor Council, Inc. proposes wage increases of 3 ½% effective the beginning of the first full pay period in January 2007, 4% effective the beginning of the first full pay period in January 2008 and a re-opener October 1, 2008 to bargain the wages to become effective the beginning of the first full pay period in January 2009.

**ARTICLE 12
WAGES**

Section 12.1 Wages and Salaries: Effective the beginning of the first full pay period in January, 2007, wage and salary rates for bargaining unit personnel shall be increased by 3.5% and applied to current rates set forth below:

CLERK/DISPATCHER 2007

	A ⁶⁸	B	C ⁹⁴	D
Current Annual Rate	\$42,956.87	\$43,453.87	\$43,938.82	\$44,424.12
2007 Annual Rate (+3.5%)	\$44,495.41 ^{72.78}	\$44,974.83	\$45,476.68	\$45,978.96
Shift Differential	\$650.00	\$650.00	\$650.00	\$650.00
TOTAL	\$45,145.41 ^{72.78}	\$45,624.83	\$46,126.68	\$46,628.96
Hourly Rate	\$21.70	\$21.94	\$22.18	\$22.42

PATROL OFFICER 2007

	A	B	C
Current Annual Rate	\$47,889.80	\$51,282.61	\$54,672.65
2007 Annual Rate (+3.5%)	\$49,565.94	\$53,077.50	\$56,586.19
Shift Differential	\$650.00	\$650.00	\$650.00
TOTAL	\$50,215.94	\$53,727.50	\$57,236.19
HOURLY	\$24.14	\$25.83	\$27.52

**LIEUTENANT (1.15 x Patrol
2007 Officer Step C Rate)**

	A
2007 Annual Rate	\$65,074.12
Shift Differential	\$650.00
TOTAL	\$65,724.12
HOURLY	\$31.60

Effective the beginning of the first full pay period in January, 2008, wage and salary rates for bargaining unit personnel shall be increased by 4% and applied to current rates set forth below:

CLERK/DISPATCHER 2008

	A	B	C	D
2007 Annual Rate	\$44,491.41	\$44,974.83	\$45,476.68	\$45,978.96
2008 Annual Rate (+4%)	\$46,271.07	\$46,773.82	\$47,295.75	\$47,818.12
Shift Differential	\$650.00	\$650.00	\$650.00	\$650.00
TOTAL	\$46,921.07	\$44,423.82	\$47,945.75	\$48,468.12
Hourly Rate	\$22.56	\$22.80	\$23.05	\$23.30

PATROL OFFICER 2008

	A	B	C
2007 Annual Rate	\$49,565.94	\$53,077.50	\$56,586.19
2008 Annual Rate (+4%)	\$51,548.58	\$55,200.60	\$58,849.64
Shift Differential	\$650.00	\$650.00	\$650.00
TOTAL	\$52,198.58	\$55,850.60	\$59,499.64
HOURLY	\$25.10	\$26.86	\$28.60

**LIEUTENANT (1.15 x Patrol
2008 Officer Step C Rate)**

	A
2008 Annual Rate	\$67,676.35
Shift Differential	\$650.00
TOTAL	\$67,026.35
HOURLY	\$33.95

The parties shall reopen the Collective Bargaining Agreement October 1, 2008 to bargain the wages to become effective the beginning of the first full pay period in January 2009.

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Conciliation Report has been served by regular mail to Barry L. Gray, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 5752 Cheviot Road, Suite D, Cincinnati, Ohio 45247-7008, and Paul Berninger, c/o Wood & Lamping LLP, 600 Vine Street, Suite 2500 Cincinnati, OH 45202-2491 on this 11th day of July, 2007 and by regular mail to Tara M. Crawford, 222 East Town St., Columbus, OH 43215 and Robert Bemmes, Mayor, City of Reading, 1000 Market St., Reading, OH 45215, and to Bureau of Mediation, SERB, 65 East State St., 12th Floor, Columbus, OH 43215-4213.

Howard Tolley, Jr.

Howard Tolley, Jr, Conciliator