

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

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RELATIONS BOARD

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IN THE MATTER OF CONCILIATION
PROCEEDINGS BETWEEN:

BUTLER COUNTY PROFESSIONAL
FIREFIGHTERS, IAFF LOCAL 4491

Employee Organization,

and

BUTLER TOWNSHIP TRUSTEES,
MONTGOMERY COUNTY, OHIO

Employer.

CONCILIATION AWARD

CASE NO. 06-MED-09-1049

DATE OF AWARD: March 3, 2008

CONCILIATOR: Charles W. Kohler

DATE OF HEARING: JANUARY 25, 2008

PLACE OF HEARING: Butler Township, Montgomery County, Ohio

APPEARANCES:

For the Employee Organization:

William E. Quinn, Jr.
International Association of Firefighters
650 Alpine Place
Trenton, Ohio 45067-9660

For the Employer:

Brian M. Wakefield, Esq.
Taft, Stettinius & Hollister LLP
110 North Main Street, Suite 900
Dayton, Ohio 45402

PROCEDURAL BACKGROUND

On December 18, 2007, the State Employment Relations Board (“SERB”) appointed the undersigned as Conciliator upon selection by the parties pursuant to Ohio Revised Code Section 4117.14(D)(1). A hearing was held on January 25, 2008 in Butler Township, Montgomery County, Ohio.

This matter involves the negotiation of an initial collective bargaining agreement between the Butler Township Trustees ("Employer") and the Butler Township Professional Firefighters (“Union”) for a bargaining unit of approximately six positions consisting of: Full-time Firefighter/Paramedics and Lieutenants.

The parties were unsuccessful in reaching an agreement during formal negotiation sessions. John Gray, a SERB mediator, was assigned to assist the parties in reaching an agreement. Following mediation, the parties reached impasse.

On May 23, 2007, the SERB appointed David W. Stanton as Fact Finder. On July 10, 2007, Mr. Stanton met with the parties and attempted to mediate the unresolved issues. Some issues were resolved during the mediation session with the Fact Finder. However, the following six issues remained unresolved, and the parties presented their respective positions to the Fact Finder for recommendations:

- Layoff & Recall
- Seniority
- Shift Trades
- Employee Benefits
- Hours of Work & Overtime
- Compensatory Time

The unresolved issues were presented to the Fact Finder during two days of hearings on August 7, 2007, and September 24, 2007. On November 20, 2007, Mr. Stanton issued his report and recommendations. The report was accepted by the bargaining unit, but was rejected by the Employer.

PROCEDURAL MOTIONS

Employer Motion

Prior to the conciliation hearing on January 25, 2007, the Employer objected to the participation of two of the representatives of the bargaining unit. These representatives were officers of the local Union, and were former employees who had been discharged by the Employer shortly before the date of the hearing.

Generally, a union may choose its own representatives without interference by the employer. The Conciliator notes that it is common to have non-employees appear as representatives of the Union at both conciliation and fact finding hearings. In addition, the Employer could cite no authority that would prohibit the participation of non-employees as representatives of the Union. Therefore, the conciliator DENIED this motion of the Employer.

Union Motion

At the commencement of the conciliation hearing on January 25, 2008, the Union made a motion that the final offer position statement of the Employer not be considered by the Conciliator, and that the Employer not be permitted to introduce evidence in support of its position on the issues pursuant to OAC 4117-9-06(E) . The motion was based on the Union's contention that the position statement of the Employer was not submitted to the Conciliator, the employer, and the SERB in a timely fashion as required by ORC Section 4117.14 (G) (3).

ORC Section 4117.14(G) (3) provides as follows:

(3) The conciliator shall conduct the hearing pursuant to rules developed by the board. He shall establish the hearing time and place, but it shall be, where feasible, within the jurisdiction of the state. Not later than five calendar days before the hearing, each of the parties shall submit to the conciliator, to the opposing party, and to the board a written report summarizing the unresolved issues, the party's final offer as to the issues, and rationale for that position.

OAC 4117-9-06(E) provides as follows:

(E) Upon notice of the conciliator's appointment, each party shall submit to the conciliator and serve on the other party a written statement. A failure to submit such a written statement to the conciliator and the other party prior to the day of the hearing shall require the conciliator to take evidence only in support of matters raised in the written statement that was submitted prior to the hearing.

The position statement of the Employer was received by the Conciliator via facsimile, and e-mail on January 23, 2008, two calendar days prior to the hearing date of January 25, 2008. The Conciliator also received a copy of the Employer's statement on January 24, 2008 by overnight mail. According to the Certificate of Service on the Employer's statement, the Employer transmitted the statement to the Union via e-mail, and sent it by overnight mail on January 23, 2008.

The Union hand-delivered its statement to the Conciliator, the SERB, and the Employer on January 18, 2008, seven days prior to the hearing date.

The Employer offered no evidence to show that it attempted to submit its statement to the any of the required recipients at least five days prior to the hearing. The Employer offered no evidence concerning the submission of its statement to the SERB. Thus, the Conciliator concludes that the Employer did not submit its final offer position statement to the Conciliator, the Employer, and the SERB within the time requirement set forth in ORC Section 4117.14 (G) (3).

On June 13, 2000, the SERB issued a decision in the case of In re Greenville Patrol Officers Association, SERB 2000-005. In Greenville, the union submitted its position statement one day

prior to a conciliation hearing. The SERB found that ORC Section 4117.14(G)(3) clearly and unambiguously requires that the parties submit their position statements no later than five days prior to the conciliation hearing.

The conciliator in Greenville permitted the union to present its position statement and to present evidence in support of its positions, in spite of the fact that it had not timely submitted its position statement. The SERB concluded that the conciliator had committed a procedural error by allowing the union to submit its statement and to present evidence. The SERB found that OAC 4117-9-06(E) requires that a conciliator only take evidence in support of matters raised in a written statement which was timely submitted.

The rationale for the requirement of filing final offer position statements was explained by the SERB in In re FOP Ohio Valley Lodge No. 112, SERB 2000-011 (11-22-00) as follows:

The filing of the position statements is a critical step in the conciliation process. In re Greenville Patrol Officers Assn, supra. O.R.C. §4117.14(G) requires nearly simultaneous filings by the parties. The conciliator must choose from either the employer's proposal or the employee organization's proposal on each of the outstanding issues. By the very design of this process, each party has an incentive to issue a final proposal that it believes the conciliator will select as the more reasonable position. If a party amends its position after receiving the other party's statement, the amending party might gain an unfair advantage over the other party: the amending party could modify its position based upon its knowledge of the other party's final position

In accordance with the holding of the SERB in Greenville, the Conciliator will GRANT the Motion of the Union. The Conciliator will only consider the final offer position statement of the Union.

DISCUSSION AND CONCLUSIONS

1. Article 13 - Layoff & Recall

Findings

The final offer of the Union on this issue is the recommendation made by the Fact Finder.

Award

Article 13 of the collective bargaining agreement will be the language recommended by the Fact Finder.

2. Article 17 - Seniority

Findings

The final offer of the Union on this issue is the recommendation made by the Fact Finder.

Award

Article 17 of the collective bargaining agreement will be the language recommended by the Fact Finder.

3. Article 22 - Shift Trades

Findings

The final offer of the Union on this issue is contained in the Union's Position Statement, filed on January 18, 2008.

Award

Article 22 of the collective bargaining agreement will be the language specified in the Union's Position Statement, filed on January 18, 2008.

4. Article 25 - Employee Benefits

Findings

The final offer of the Union on this issue is the recommendation made by the Fact Finder.

Award

Article 25 of the collective bargaining agreement will be the language recommended by the Fact Finder.

5. Article 30 - Hours of Work & Overtime

Findings

The final offer of the Union on this issue is the recommendation made by the Fact Finder.

Award

Article 30 of the collective bargaining agreement will be the language recommended by the Fact Finder.

6. Article 41 - Compensatory Time

Findings

The final offer of the Union on this issue is the recommendation made by the Fact Finder.

Award

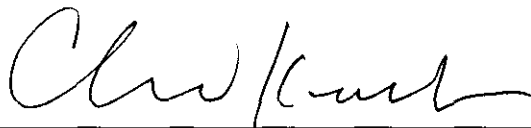
Article 41 of the collective bargaining agreement will be the language recommended by the Fact Finder.

CONCLUSION

All other matters which were subject to collective bargaining have been resolved by agreement between the Employer and the Union. The tentative agreements of the parties on these matters are incorporated by reference as part of this Award.

The parties have agreed that all Articles tentatively agreed to, and those included in the Conciliator's Award will have an effective date of January 1, 2007. In this regard, the parties have agreed to waive the provisions of ORC 4117.14(G)(11).

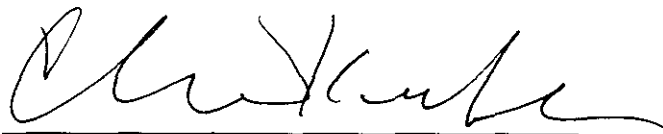
In conclusion, the Conciliator submits his decision with respect to the outstanding issues, and orders that the awards be incorporated into the collective bargaining agreement of the parties.



Charles W. Kohler, Conciliator

CERTIFICATE OF SERVICE

I do hereby certify that on this 3rd day of March 2008, a copy of the foregoing Conciliation Award was served upon the representatives of the parties at the addresses shown on the title page of this Award; and upon Edward E. Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Conciliator