

2008 OCT 29 P 12:08

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

OCTOBER 28, 2008

FRATERNAL ORDER OF POLICE
LODGE 57

CASE # 06-MED-09-1067
CASE # 06-MED-09-1068

and

CITY OF RICHMOND HEIGHTS

REPORT & AWARD OF
CONCILIATOR

APPEARANCES

For the Union

Robert M. Phillips, Esq.
Richard Olexa, Promoted Unit
Todd Leisure, Patrolman

For the City

Marc J. Bloch, Esq.
Heather Vlasuk, Esq.
Gene Roe, Chief
Lynda Rossiter, Finance Director

ROBERT M. LUSTIG
Conciliator
615 Leader Building
526 Superior Avenue, E.
Cleveland, Ohio 44114-1964

Introduction

This Conciliation involves the Patrol Officers, Detectives, Sergeants and Lieutenants (“Police”) represented by the Fraternal Order of Police (“FOP” or the “Union”) and the City of Richmond Heights (the “City”). The Agreement between the FOP and the City expired December 31, 2006.

Negotiations failed. The matter was submitted to Fact Finding. The Findings and Recommendations of Fact Finder James M. Mancini were issued May 20, 2008. The FOP accepted the Fact Finder's Recommendations. However, the City rejected same.

The undersigned was duly appointed conciliator. The hearing was set, by agreement of the parties, for October 6, 2008. The hearing commenced at 10:00 AM and was closed at 3:30 PM.

Both sides presented such evidence as they desired. The taking of a verbatim transcript was waived. A copy of the Waiver is attached. All documents were received without objection from the other party. This includes the position statements, Union Exhibits 1 - 10, City Exhibits A-I, and the Fact Finder's Findings and Recommendations. The conciliator thanks both parties for their professionalism and courtesy.

In determining this Award, the conciliator considered the criteria set forth in Ohio Revised Code Section 4117.14(G)(7) which are:

- 1) Past collectively bargained agreements, if any, between the parties.
- 2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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 interests 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 standards of public service.
- 4) The lawful authority of the public employer.
- 5) The stipulations of the parties.
- 6) Such other factors, not confined to those listed in this section which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact finding or other impasse resolution procedures in the public service or in private employment.

Facts

The parties most recent agreement covered the period January 1, 2004 through December 31, 2006.

As to economic issues, the City asserts an inability to pay any increase in wages or in benefits for 2007 and that its positions are based on sound financial management of the City's finances. It was stipulated that we are dealing with a three year contract for the period 2007, 2008 and 2009.

The City has 67 full-time and 68 part-time employees. Of that number, 23 are members of the bargaining unit, of which 17 are patrol officers and six (6) are supervisory officers. The City has not entered into an agreement for the 2007-2009 period with either the firefighters or its service employees. The firefighters and the City went to Fact Finding which was rejected by the firefighters. A conciliation hearing is scheduled with a different conciliator for the firefighters.

With that as background, we turn to the issues that were presented at the conciliation hearing,

bearing in mind that the burden of proof is on the party advocating a change. However, prior to reviewing each issue as is required by statute, we must first resolve the question of the City's ability to pay.

Ability to Pay

While this issue is often referred to as “ability to pay”, ORC §4117(G)(7)(c) states the criteria as being:

The ability of the public employer to finance and administer the issues proposed.

The City offered the testimony of Beverly Vitaz, a senior vice president with S.R. Snodgrass, a CPA since 1976, who has worked extensively with governmental units. Ms. Vitaz opined that the City could not afford any wage increase for 2007 but could afford 3% wage increases in each of 2008 and 2009 and a lump sum 3% bonus if and when the City received certain funds from the County Prosecutor which arise from a forfeiture. She further testified that, while cash flow would permit a wage increase for the police for 2007, there was insufficient cash flow to allow an increase for the other city employees.

The City's Director of Finance testified the General Fund balance had declined from \$800,000 in 2004 to 28,000 in 2007. It is estimated at \$128,000 for 2008. Local millage for the General Fund is at the maximum and real estate tax collections are not looking good. A 3% bonus for all city employees would cost approximately \$190,000. Wage increases of 3% for 2008 and 2009 are included in the budgets.

The City does say it expects to receive approximately \$500,000 arising from a forfeiture of property in a criminal case and believes receipt of these funds is virtually certain and in the near future. It says it would make a one time lump sum payment equal to 3% of wages to all City

employees upon receipt of these funds.

Further, at hearing, the City asserted the Fact Finder had erred in finding the City had the ability to finance a wage increase for 2007 because the Fact Finder had considered the impact of a wage increase only on the police and not for all City employees.

The Union pointed out that, with full support from police and fire, the City's drive to obtain a special levy to finance fire services had been successful and that, in 2008, the City had realized new income from the fire levy of over \$900,000. That is money that no longer had to come out of the General Fund.

Discussion

The City's Exhibit H shows how the fire levy funds were allocated for 2008. Some went to increased expenses for such things as gas and road salt. \$350,000 went for wage and benefit increase for 2008. \$331,000 went to reimburse the capital fund for transfers made to the General Fund in 2007.

The Finance Director testified that the capital fund was a restricted fund that has been designated as restricted by the Richmond Heights City Council. This is not a restriction imposed by statute. It is a restriction created by Council and that can be changed by Council.

The Finance Director also testified that a 3% wage increase for all city employees for 2007 would cost \$192,000.

The statutory criteria under which conciliators must make their decisions is “the ability of the public employer to finance.”

Prior to 2008 the City routinely transferred over \$1,000,000 yearly into the General Fund to cover General Fund disbursements which included wages and benefits for the firefighters. For 2008

and 2009, revenue from the newly passed fire services levy produces about \$950,000 per year, thereby reducing the drain on the General Fund in that amount.

The City has discretion in how it allocates its General Fund Revenues but, having reduced the need to fund the firefighters wages and benefits to the extent of the revenue received from the fire services levy, those funds are clearly within the City's ability to finance the wage increases sought in this contract period.

How the City will use the funds when received from the forfeiture will be within the City's discretion. Both the City's expert and the City's Finance Director were clear - that this is an extraordinary one time item and that sound financial management would call for these funds to be used for one time expenditures, such as for a capital item or to replenish reserves.

The City correctly argues that its ability to pay should be measured against its ability to give wage increases to all its employees. It asserts that it treats its employees uniformly and that if an increase is granted to one department, the others would normally be given comparable raises. Comparability of treatment of different departments is a commonly accepted criteria in the determination of an award.

The Fact Finder found that the City had the ability to pay:

However, this fact-finder has determined that the City can fund the recommended increases for the bargaining unit here out of currently available revenue resources and the wage adjustments would not have any kind of detrimental effect on the normal standard of public service. The City's position completely ignores the fact that a fire levy was passed in November 2007. Prior to that time, the fire department was funded in large part from the General Fund in an amount which averaged about 1 million dollars per year. As even the City's Finance Director acknowledged, the passage of the fire levy means that the fire department operations will now be funded from those levy revenues. This will result in a savings of about \$900,000 for the General Fund in current fiscal year 2008. As noted by the

FOP's financial expert, it is these additional General Fund resources which can now be used to finance wage increases for the bargaining unit in each year of the Contract. As Mr. Deppert concluded, the City can "easily afford pay increases. . .to its police officer employees for 2007 through 2009." Although, the FOP has requested increases of 4% to 4.5% per year, this fact-finder finds that it would be more reasonable to provide for 3% wage increases for each year of the Contract.

The City focuses on the Fact Finder's references to the "bargaining unit" to argue that he ignored the impact on the rest of the City's employees. This is too narrow a reading of this finding. As discussed above, the entire proceeds from the fire services levy reduces the drain on the General Fund dollar for dollar. As testified to by the Finance Director, a 3% wage increase for all City employees aggregates \$192,000. There are means available to finance an across the board increase.

Having determined the City does have the ability to finance the issues, we will now deal with each issue by selecting between each party's final settlement offer as is required by ORC §4117.14(G)(7).

Issue No. 1
Salary Schedule

City Position:

Wages: -0- increase for 2007
 3% increase for 2008
 3% increase for 2009
 3% lump sum upon receipt of funds from a forfeiture

Rank Differential: No change

DARE Officer Premium: \$40 per month

Proficiency Allowance: No change

In addition to its assertion that the City is unable to pay a wage increase for 2007, the City argues that it has always treated all its employees alike so that a wage increase will result in a City wide increase.

The City says it is willing to provide a one time 3% bonus when it receives a forfeiture of some \$500,000 arising out of a criminal matter that it asserts it is virtually certain to receive.

Union Position:

Wages: 2% increase for 2007

 3% increase for 2008

 4% increase for 2009

Rank Differential: Increase by 1% to 12%

DARE Officer Premium: \$25 per month

Proficiency Allowance: Increase to \$1,250 on January 1, 2009 under Section 15.7(a)

 Increase to \$750 on January 1, 2009 under Section 15.7(b)

In addition to arguing that the City has the ability to finance wage and pay increases, the Union points out the negative effect that a year in which there is no wage increases has on a police or firefighter's ultimate pension.

Finally, the Union argues that what it is asking for is actually less than the Fact Finder's Recommendations and that these Recommendations should be upheld.

Discussion

The burden of proof is on the party seeking to overturn the Fact Finder's Recommendation. Further, the Fact Finder's Recommendation is entitled to respect and is to be given great weight. As stated by Arbitrator Harry Graham in *International Union of Police Associations vs. City of Findlay*,

SERB No. 00-MED-09-0949:

There is a clear bias in interest arbitration proceedings to defer to the award of the Factfinder if either of the parties embraces it.

This Conciliator agrees with Arbitrator Graham. Further, as stated above, this Conciliator agrees with the Fact Finder's analyses that the City does have the ability to finance the increases he recommended.

The Union's final position is in line with the Fact Finder's Recommendations and will be accepted.

Issue No. 2
Holidays

City Position:

Maintain prior contract provision.

Union Position:

Accept Fact Finder's Recommendation which was to maintain the prior contract provision.

Discussion

The parties are in agreement on this issue.

Issue No. 3
Sick Leave

City Position:

Maintain prior contract provision.

Union Position:

Accept the Fact Finder's Recommendation which was to maintain the prior contract provision.

Discussion

The parties are in agreement on this issue.

Issue No. 4
Uniform Allowance

City Position:

Maintain prior provision of contract of \$1,050 per officer and an additional \$325 for SWAT team member for 2007 and 2008. Increase by \$75 to \$1,125 per officer and increase the additional \$325 for a SWAT team member for 2009 by \$50 to \$375.

Union Position:

Accept Fact Finder's Recommendation which is to increase the Uniform Allowance \$25 for 2008 and \$25 for 2009. No increase for SWAT team members.

Discussion

The Union's final position, which is in line with the Fact Finder's Recommendation, is accepted.

Issue No. 5
Vacation

City Position:

Maintain prior contract provision.

Union Position:

One additional day of vacation per year for service for 21st through 25th year.

Discussion

The Fact Finder found and the evidence supports the granting of an additional day of vacation for each year of service after 20 years through the 25th year.

Issue No. 6
Insurance

City Position:

No changes in Life Insurance.

For Health Insurance, employees contribute 50% of any increase in premiums over the premiums in effect for 2008.

Union Position:

Accept the Fact Finder's Recommendation which was no change in either Life or Health Insurance.

Discussion

As found by the Fact Finder and from the evidence, the City has paid 100% of the healthcare premiums for all its employees. Half of the neighboring communities pay 100% of the healthcare premiums. As the wage increases granted are less than the increases in the cost of living¹, assessing part of these premiums to the employees would, effectively, be a decrease in wages.

The parties are in agreement that life insurance coverage will remain unchanged.

The Union position, which is the Fact Finder's Recommendation, is confirmed on both of these issues.

¹/ 2.8% for 2007. 5.6% through September 2008.

U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index - All Urban Consumers.

Award

Issue 1 - Salary Schedule:

Wages: 2% increase for 2007

3% increase for 2008

4% increase for 2009

Rank Differential: Increase by 1% to 12%

DARE Officer Premium: \$25 per month

Proficiency Allowance: Increase amount under Section 15.7(a) to \$1,250

Increase amount under Section 15.7(b) to \$750

Both as of January 1, 2009

Issue 2 - Holidays

No change from the language of the prior contract.

Issue 3 - Sick Leave

No change.

Issue 4 - Uniform Allowance

Increase uniform allowance \$25 effective January 1, 2008 and a further \$25 increase effective January 1, 2009.

No change in the \$325 additional allowance for SWAT team members.

Issue 5 - Vacation

Add one (1) additional vacation day for each year of service for the 21st through the 25th year.

Issue 6 - Insurance

Life Insurance: No change

Health Insurance Premiums: No change

As provided by ORC §4117.14(I), this final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award.



Robert M. Lustig, Conciliator
Cleveland, Ohio
October 28, 2008

Certificate of Service

A copy of this Award was sent electronically and by ordinary U.S. mail October 28, 2008 to:

Marc J. Bloch
Walter & Haverfield, LLP
1301 East 9th Street, #3500
Cleveland, Ohio 44114-1821
mbloch@walterhav.com

and

Robert M. Phillips
Faulkner, Muskovitz & Phillips, LLP
820 West Superior Avenue, 9th Floor
Cleveland, Ohio 44113-1800
phillips@fmplaw.com

with copy to SERB by ordinary U.S. mail only at:

State Employment Relations Board
Bureau of Mediation
Edward E. Turner, Administrator
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213



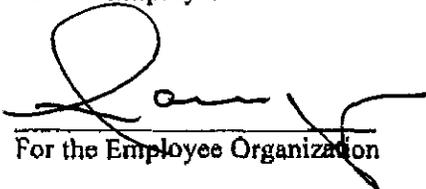
Robert M. Lustig

Waiver

The parties to this Conciliation hearing identified below hereby waive the composition of a *verbatim* written record of the Conciliation hearing conducted on Oct. 6, 2008 at Adelard Hess US, Ohio, and agree to accept the Conciliator's notes and the documentary evidence received as a full and complete record consistent, and in full compliance, with ORC § 4117.14(G)(6).



For the Employer



For the Employee Organization



Conciliator

Signed and executed this ~~08/25~~ ²⁰⁰⁸ day of August, 2008 at Adelard, Ohio.