



STATE EMPLOYMENT
RELATIONS BOARD

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD DA 11: 38

IN THE MATTER OF
FINAL OFFER SETTLEMENT AWARD
BETWEEN:

City of Vermilion, Ohio)	
)	Case Nos: 06-MED-10-1250, 1251, 1252
and)	
)	Conciliator: Colman R. Lalka
Fraternal Order of Police,)	
Ohio Labor Council)	

HEARING
Date of Hearing: November 26, 2007
Location of Hearing: Vermilion, Ohio

ATTENDANCE AT HEARING
For the Employer:
Patrick A. Hire, Management Consultant
Catherine Kouns Born, Senior Consultant
Wayne Hamilton, Director of Finance

For the Union:
Jackie Wegman, Staff Representative
Kay Cremeans, General Counsel
Diane D. Lugos, Full-Time Dispatcher
Greg Stark, Part-Time Patrolman
Cindy Stepp, Part-Time Dispatcher
Melody Leisure, Part-Time Dispatcher

BACKGROUND

The City of Vermilion, Ohio has recognized the Fraternal Order of Police, Ohio Labor Council as the bargaining representative for certain employees of the City. Those employees comprise three Bargaining Units consisting of seven part-time Patrolmen, four full-time Dispatchers, and four part-time Dispatchers. The Bargaining Units are duly certified by the State

Employment Relations Board and had a Labor Agreement in effect that expired on December 31, 2006. Formal bargaining between the Parties has been ongoing, with Fact-Finding having been conducted and the Fact-Finding Report rejected. Said Fact-Finding Report, issued September 4, 2007, is incorporated herein by reference.

Each Party requested the Conciliator convene a hearing and matters at impasse be determined pursuant to a Final Offer Settlement procedure on an issue-by-issue basis in keeping with ORC 4117 and related Rules and Regulations adopted by SERB.

The hearing was convened on the date and at the place indicated above. At that time the Parties were given the opportunity to present evidence and argument in such a manner that would allow the Conciliator to issue a Final Offer Settlement Award on all disputes between the Parties on an issue-by-issue basis. Provisions were made allowing for a written record of the proceedings.

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the Conciliator in resolving the disputed issues were those set forth in ORC 4117.14(G)(7)(a) through (G)(7)(f) and Rules 4117-9-06(H) through (H)(6) of the State Employment Relations Board, to wit:

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, 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. The 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 final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

POSITION STATEMENTS

Each Party submitted a written Position Statement to the Conciliator, however, at the commencement of the hearing, each Party objected to its counterpart's Position Statement. The City claimed the Union failed to file its Position Statement with SERB, however, the only

evidence in support was a lack of SERB on the FOP's Certification of Service. The FOP indicated its Position Statement had been forwarded to SERB. A telephone call placed to the appropriate SERB Official by the Conciliator disclosed both Position Statements to have been timely submitted to SERB.

The Union argued the City's Position Statement was not received five days prior to the hearing. The Position Statement was forwarded via U.S. Postal Service Express Mail, Next Day Service, on November 20, 2007, however, the item was not taken to the Post Office in time for the next day delivery guarantee. November 22nd was the Thanksgiving holiday, and the Postal Service attempted delivery on November 23rd. No one was available to sign for the delivery, and notice of the attempt was left. The Position Statement was delivered the following day, November 24, 2007.

In addition to service of the City's Position Statement via Express Mail, service was also attempted via fax on November 20, 2007 to the Union Staff Representative at her fax number of record. The attempt failed. The fax machine, located in the Staff Representative's home, was either turned off or inoperable at the time of attempted service. Shortly after failure of the fax to the Staff Representative, the City's Position Statement was faxed to, and received at, the FOP office in Columbus, Ohio. That is, the Position Statement was received at the FOP's Columbus office on November 20, 2007.

Based upon the foregoing, the Conciliator finds each Party timely submitted a written Position Statement to opposing counsel, to the Conciliator, and to SERB, as mandated by law and SERB Rules and Regulations.

ISSUES AT IMPASSE

Article 15 General Compensation for Full-Time Personnel

15.01 is the Section of Article 15 in contention. The City proposes Section 15.01 read:

Effective the full pay period following January 1, 2008, the wage scale shall be increased by 3%;

Effective the full pay period following January 1, 2009, the wage scale shall be increased by 3%.

The Union proposes:

Wages to be increased three percent (3%) January 1, 2007, 2008, and 2009.

DISCUSSION AND AWARD

During the course of negotiations, extensions of time limits were taken wherein both Parties agreed to waive limitations on the Conciliator's authority as provided in ORC 4117(G)(11), and the waiver expressly provided, ". . . the Conciliator, in his judgment based on the merits of the hearing, may award increases in rates of compensation and other matters with cost implications effective January 1, 2007 . . ."

The City states it is not arguing an inability to pay, it is an inability to pay what the Union is requesting. That inability is the result of the current health care plans in force throughout the City. If the Union accepts the health care plan offered by the City, it is claimed, the City can afford the wage increases contained in its, the City's, Final Offer.

The Union argues it has been in on-going negotiations with the City, and agreed to extensions of time limits to permit the City to negotiate first with the largest Police Union. That Union, the Ohio Patrolmen's Benevolent Association (OPBA), representing full-time Police Officers, and the City failed to reach agreement, and, the FOP argues, it is unfair for its members to be deprived of wage increases retroactive to January 1, 2007 as the result of its willingness to hold its own negotiations in abeyance.

The Union points out both the FOP Fact-Finder in this matter and the OPBA Fact-Finder recommended 9% wage increases over the life of each Labor Agreement under consideration. Additionally, the Union claims, retroactivity to January 1, 2007 will compensate its Bargaining Unit Members for higher hospitalization deductibles and co-pays. The Union argues the City has the ability to pay the Union's requested wage increase, just an unwillingness, and points to the March 26, 2007 *Municipal Council of the City of Vermilion Minutes of the Special Finance Committee*, which indicate an unappropriated General Fund of \$400,000.00.

The City counters by pointing to Article 36, the Parity Clause of the Parties' Labor Agreement. As the result of the Parity Clause, the City argues, Bargaining Unit Members receive the best health care plan available, and do not face higher deductibles and co-pays. Moreover, it is claimed, the Finance Committee Chair was new to the position, with less than one year under his belt, and erred in his claim of \$400,000.00 unappropriated in the General Fund.

The *Report to Council by Finance Director* dated January 22, 2007, indicates an ending General Fund balance of \$270,000.00 for 2006, an increase from the beginning 2006 balance of

\$90,000.00. This increase, according to the report, was the result of a decrease in amounts usually transferred to Street Maintenance and Repair and the Water Safety Fund, not filling a position in the Police Department, an across-the-board reduction in overtime, and foregoing roof repair to City Hall. The March 26, 2007 *Minutes of the Special Finance Committee* indicate the Finance Director submitted a balanced budget for Council's review.

Finally, the Union notes the City granted members of Laborers' Union, Local 860, a 3% wage increase effective January 1, 2007, along with a \$250.00 bonus for each of its members. The Union argues those positions are unskilled, in contrast to the skilled positions of its Bargaining Unit Members. The City counters by pointing out the wage increase and bonus were the result of a wage reopener in the Laborers' Labor Agreement, with a minimum guarantee of 3% and \$250.00. That is, the City argues, it concluded its negotiations with the Laborers' Union with the minimal increases possible under its Labor Agreement with the City.

The City also argues its accounts are in disarray as the result of the previous administration having deleted computer records, which cannot be recovered, and mixing the hard copies of five-hundred accounts and placing them into boxes, making it impossible for the current administration to decipher. In fact, the City points out, litigation has been commenced against members of the former administration for destruction of the financial records. What this all means, the City argues, is that the City is in the process of attempting to determine not only its current financial condition, but also where it is headed.

In support of its argument of an inability to pay the amount the Union requests, the City places great emphasis on its possible placement by the State Auditor under Fiscal Watch. Currently, the Conciliator notes, the City is under Fiscal Watch review, at the City's request by letter dated September 21, 2007. In his letter to the State Auditor, Council President stated, in part:

At our Monday, August 20, 2007 . . . Vermilion City Council Meeting, Wayne Hamilton, Vermilion Finance Director, stated that he had not posted at least one journal entry from Ordinance 2007-28 . . . which was passed on April 16, 2007. We have no way of knowing what other items have not been posted or for how long this has been a regular practice. We also have no way of knowing how many, and for how long inaccurate financial reports have been distributed based on this practice.

At this same meeting, Mr. Hamilton refused to publicly state why the Bramhall account still had outstanding balances. Please refer to the "Statement of Account" from Bramhall Engineering . . . dated Sept. 10, 2007 showing \$11,959.00 past due over 90 days and \$15,294.00 over 60 days past due.

Thus, the above quoted paragraphs in the City's letter to the State Auditor substantiate its argument of current accounting disarray. This disarray, when combined with other aspects of the Parties' presentations, as for example, the balanced budget presented to Council, despite the City's claims of expenditures exceeding revenues, and the increase in the General Fund for 2006, make it exceedingly difficult for the Conciliator to accept the City's argument of inability to pay the Union's requested 3% wage increase retroactive to January 1, 2007.

Accordingly, it is the order of the Conciliator that the Union's Final Offer be implemented.

Article 16 General Compensation for Part-Time Personnel

Currently, Sections 16.01 and 16.02 provide part-time Patrolmen and part-time Dispatchers, respectively, be paid 85% of the full-time rates. For its Final Offer, the City proposes the status quo for both Sections.

The Union's Final Offer reads:

16.01 The pay ranges for part-time Patrolmen are located in the appendices to this Agreement. The pay rate for a part-time Patrolmen shall be 90% of a full-time Patrolmen's rate.

(See Appendix D)

16.02 The pay ranges for part-time dispatchers are located in the appendices to this Agreement. The pay rate for a part-time Dispatcher shall be 90% of a full-time Dispatcher's rate.

(See Appendix D)

DISCUSSION AND AWARD

The Union argues that the City enjoys considerable savings by employing part-time Patrolmen and Dispatchers. That is, the Union points out, the City does not provide benefits for part-timers, provides no health care, no longevity, no sick time, and the City also enjoys savings by cutting down on overtime costs. The part-timers have the same duties and responsibilities as full-time Patrolmen and Dispatchers, and, the Union continues, it has a strong belief in equal pay for equal work.

Vermilion has a population of 11,000, but, being a "resort town," it is emphasized, the summer population swells to 25,000 to 30,000. In 2006, it is noted, there were 18,945 calls for service with 1,821 arrests being made. Part-time Patrolmen are an anomaly, the Union claims, and in attempting to find comparable jurisdictions with part-time Patrolmen, it could find only

the City of Amherst. Amherst, the Union emphasizes, pays its part-time Patrolmen 100% of full-time Patrolmen wages. Part-time Dispatchers, while not common, are found in other jurisdictions. However, the Union concludes, it knows of no other jurisdiction that has differing wage rates for part-time versus full-time Dispatchers.

The City notes the Union requested the wage rate for part-timers be set at 85% of full-time wages two Contracts ago, when the Bargaining Units were first established. Why, the City queries, is it suddenly inequitable to pay its part-timers at 85% of full-time wages? Moreover, it is stated, the City's part-time Patrolmen and Dispatchers are earning wages comparable to other jurisdictions, and points to the cities of Willowick, Maple Heights, and Oberlin. Willowick employees part-time Patrolmen, with a top level hourly wage of \$18.47. Vermilion, it is noted, is only 24¢ less without a wage increase.

The City notes Maple Heights and Oberlin employ part-time Dispatchers. The annual salary for part-time Dispatchers in Maple Heights is listed in the SERB data as \$41,097.26, and the City indicates it is somewhat confused by this figure, as no part-time Dispatchers earn that much. This figure is, perhaps, a data entry error, and is discounted. Oberlin's top level part-time Dispatchers are listed at \$15.20 hourly, which, the City points out, is less than Vermilion's top level of \$15.63.

Additionally, the City points out, a 5% increase in the percentage earned by part-time Dispatchers compared to full-timers, when coupled with the 3% wage increase, results in an 8% total increase for part-time Dispatchers. The same situation results with part-time Patrolmen, however, the City notes, full-time Patrolmen belong to another Union. With the wages of part-time Patrolmen being tied to another Union, currently awaiting Conciliation, it is difficult to predict the total percentage wage increase to the part-time Patrolmen. While equal pay for equal work is a nice phrase, the City concludes, no other employees in the City are receiving the wage increases the part-timers would receive if the Union's position is accepted.

The Union counters by pointing out the City's comparables do not indicate the wages earned by full-time Patrolmen and Dispatchers. In other words, the data do not indicate if part-timers in Willowick, Maple Heights, and Oberlin are earning 100% of the wages of the full-timers, that is, obtaining equal pay for equal work.

Moreover, the Union advocate points out she was in negotiations two contracts ago when the 85% wage ratio was set. That was a starting point, it is stated, with the goal of eventual parity. After twelve years, the Union believes, it is time to start moving toward its goal of parity.

The Conciliator notes that while City's Position Statement indicates, "Currently, the part-time employees get 85% of the full-time rate, but only perform, at best, half the duties of a full-time employee," nothing in support of that position was offered at the Conciliation Hearing. In her Report, the Fact-Finder addressed the same point, and found, in her recommendation of a 90% ratio, "The City's contention that part-time patrol officers do half the work of full-time police officers is not accurate on an hour-for-hour basis." The Fact-Finder went on to emphasize part-time Patrolmen face the same dangers as full-timers, and do not receive benefits.

Considering the presentations of the Parties, the Conciliator reaches the same conclusion regarding the part-time Patrolmen ratio as reached by the Fact-Finder. The same reasoning applies to part-time Dispatchers. While it is true that decreasing the disparity between the amounts earned by part-timers versus full-timers will increase the total wage increase, that situation will result every time the Union attempts to bring part-timers and full-timers into parity, and cannot be used as a continual justification for a denial of parity.

It is the order of the Conciliator that the Union's Final Offer be implemented.

Article 19 Longevity Benefits

DISCUSSION AND AWARD

The issue of the amount of Longevity benefit has been discussed between the Parties, and argued at Fact-Finding. The Fact-Finder recommended the City's position of converting the current longevity benefit from a percentage of annual base pay to lump sum payments. The City's Final Settlement Offer proposes Section 19.02 be changed to read as follows:

Following five (5) years of full-time employment, such members shall be eligible to receive, in addition to their regular wage, a sum in the amount of one percent of their annual base pay. Each year thereafter, such members shall be eligible to receive an additional one-half of one percent, up to and including the maximum provided for in section 19.03. For example:

Years of Service	Full-Time Dispatchers
5	\$338.42
6	\$573.64
7	\$764.86
8	\$956.07

9	\$1,147.29
10	\$1,338.50
11	\$1,529.72
12	\$1,720.93
13	\$1,912.14
14	\$2,103.36
15	\$2,294.57
16	\$2,485.79
17	\$2,677.00
18	\$2,868.22
19	\$3,059.43
20	\$3,250.64
21	\$3,441.86
22	\$3,633.07
23	\$3,824.29
24	\$4,015.50
25	\$4,206.72

In its Position Statement, the Union failed to submit a proposal regarding Article 19, therefore, the City points out, relying on *Fairborn Professional Fire Fighters' Assoc. IAFF Local 1235 v. City of Fairborn, 90 Ohio St. 3d 170, 2000*, the Conciliator may only award the City's proposal.

The Union indicated it understood the City's attempt to contain Longevity costs, and previously agreed to the City's proposal and the Fact-Finder's recommendation. However, at the Conciliation Hearing, the Union changed its position, and requested Section 19.02 remain unchanged in the Collective Bargaining Agreement.

ORC 4117.14(G)(7) provides the Conciliator must select from the Parties' Final Settlement Offers. As stated by the Supreme Court in *Fairborn*, "There is no splitting the baby on specific issues—the arbitrator must choose from one Final Offer or the other on each issue." On this issue, there is only one Final Settlement Offer before the Conciliator, the City's.

It is the order of the Conciliator that the City's Final Settlement Offer be implemented.

Article 20
Uniform Allowances

The Union proposes changes to Section 20.02 of Article 20 to read as follows:

20.02 Purchase Allowances. Members of the bargaining unit shall receive the following annual allowances to be used for the purchase of uniforms. This allowance shall be paid semi-annually, on July 1 and December 1. Effective December 1, 2007 eligible employees shall receive 50% of the following amounts:

Member	Allowance
(1) Part-time Patrolmen	\$362.50
(2) Full-time Dispatchers	\$350.00
(3) Part-time Dispatchers	\$212.50

The City's Final Offer requests Article 20 remain unchanged.

DISCUSSION AND AWARD

Currently, pursuant to Section 20.02, part-time Patrolmen annually receive \$350.00, full-time Dispatchers receive \$325.00, and part-time Dispatchers receive \$200.00. The Union presented receipts from December 2006 establishing costs incurred by one Dispatcher for purchases of four shirts, two pairs of pants, installation of four zippers in the shirts, and affixing patches to the shirts, totaling \$285.83. Summer and winter jackets, shoes, and ties, the Union points out, must also be purchased. Additionally, the Union presented comparables which, the Union points out, indicate uniform allowances of approximately three times the amount received by Vermilion Dispatchers.

The City points out full-time Dispatchers, pursuant to Sections 20.02, Purchase Allowances, and 20.03, Maintenance Allowances, receive a total annual amount of \$585.00 for uniforms. There has been no evidence that amount is insufficient for uniforms, and, the City points out, uniforms are provided to new employees pursuant to the Labor Agreement along with any other required equipment. The City also argues it is not necessary for the employees to purchase new uniforms every year, and the employees can use the money currently provided as the employees see fit, as long as their uniforms are neat and clean.

The jurisdictions provided by the Union are not true comparables, the City insists, noting the Sheriff Departments discussed by the Union are jurisdictions with different funding structures and employees with different duties. A comparison of eighteen communities discloses, for full-time Dispatchers, average uniform allowances of \$279.72 and maintenance allowances of \$31.11, well below the amounts currently received by Vermilion Dispatchers. For

part-time Dispatchers and Patrolmen, the City concludes, none of the eighteen communities, except Vermilion, reported uniform maintenance allowances.

Based upon the foregoing, the Conciliator concludes no justification has been established for an increase in the amounts currently reflected in Section 20.02. The Conciliator concludes the City position to be appropriate.

It is the order of the Conciliator that the City's Final Settlement Offer be implemented.

Article 31 Hospitalization and Medical Insurance; Optical and Dental Care

The City's Final Settlement Offer proposes deleting the language of current Article 31, and replacing it with:

Section 31.01. Hospitalization and Medical Insurance. The Employer agrees to provide the eligible bargaining unit employees the same hospitalization and medical insurance plan(s) as provided to all of the Employer's nonbargaining unit employees, at the same costs.

Section 31.02. Health Insurance Committee. The Employer agrees to establish a joint advisory committee on healthcare benefits which shall include a representative from the bargaining unit. The joint committee will evaluate, periodically, the benefits and costs and make recommendations to the City for cost containment measures. The Employer agrees to present any pending changes to the Health Insurance Committee prior to the effective date of any such changes.

For its Final Settlement Offer, the Union proposes:

31.01 The City agrees to provide eligible bargaining unit members the same hospitalization, medical insurance, prescriptions, and premium costs as provided to all other eligible City employees, including management. If at any time during this Agreement, health benefits are not the same for all eligible City employees, the bargaining unit members shall be provided with the highest coverage/lowest out-of-pocket costs plan as is provided to another group of City employees.

31.02 The City agrees to establish a joint advisory committee on healthcare benefits which shall include a representative from each bargaining unit. The joint committee will periodically evaluate the benefits and costs and make recommendations to the City for cost containment measures. The City agrees to present any pending changes to the Health Insurance Committee prior to the effective date of any such change.

DISCUSSION AND AWARD

The City is self-insured, has fifty-eight employees, and four different health plans. It is its desire, the City states, to reduce the number of health plans to one, enabling it to obtain better rates. Last year, the City points out, the health care plans finished \$27,000.00 in the red.

According to the City, the Union is, in actuality, proposing a health benefit increase in that its proposal locks its health benefits to three different groups, the OPBA, the Laborers' Union, and nonbargaining employees. With the parity provision of its Labor Agreement, the FOP receives the benefits of the best plan available without being required to give up anything in return. What the City is attempting to accomplish, it is stated, is to begin to change the direction of the road by tying the FOP's health care benefits to those of nonbargaining employees. If the OPBA falls in line, and the Laborers follow suit, the City will have all unions and nonbargaining employees in one single plan, permitting the City to obtain the best health care benefits for the best price.

The Union points out the health benefit applies to only four of its members, one of whom has cancer. Cancer treatments are expensive, and, as a result, dictate some of the costs to the City. That is, even under a new plan, costs will remain high.

During negotiations for the current Labor Agreement,¹ the Union emphasizes, the City claimed the health care plans were bankrupting the City, and concessions were needed. At that time, the Union continues, it agreed to higher co-pays and deductibles under the assurance other employees would follow suit. Contrary to what was stated during negotiations, the Union points out, the City, in later negotiations with other unions and in an ordinance, gave other employees health benefits at less cost to those employees. The parity provision of FOP Labor Agreement prevented its members from paying more than the other employees.

The Union emphasizes the City had an opportunity in 2007 to rectify the situation when it enacted an ordinance regarding health benefits for nonbargaining employees. Instead, the Union continues, the ordinance lowered costs to nonbargaining employees, along with granting a 3% pay raise. Moreover, the Union adds, as recently as August 10, 2007, the City reached tentative agreement with the OPBA on a health plan that is different than its proposal to the FOP. Under the OPBA's tentative agreement, the City agreed to caps on co-pays and premium costs. Under the City's proposal to the FOP, the Union points out, there are no caps, with the City having total control over the plan. The City can simply pass an ordinance applying different health care benefits to nonbargaining employees which the Union will be forced to accept. With the City being permitted to dictate out-of-pocket expenses, co-pays, and deductibles, FOP members may *not realize any cost of living wage increases, and may actually lose money.* The two proposals

¹ References herein to "current" Labor Agreement are to the Labor Agreement effective January 1, 2004.

aren't that far apart, the Union concludes, except the FOP's proposal offers some protection against higher co-pays and deductibles.

The City's recent ordinance regarding health care benefits to nonbargaining employees and the tentative agreement reached with the OPBA on the same issue, the Conciliator notes, seem to belie the City's argument of attempting to have all city employees on a single health plan comparable to the plan it is offering the FOP. The City's Final Settlement Offer reserves to it the right to reduce the FOP's health benefit, or increase costs to its members, at any time during the term of the Collective Bargaining Agreement by enacting an ordinance that changes health care benefits to nonbargaining employees. In the interim, if the OPBA tentative agreement is implemented and the Laborers' Union does not accept a plan similar to the plan offered to the FOP, members of other unions will be enjoying superior health benefits.

Inherent in every Collective Bargaining Agreement is job security for the Bargaining Unit Members. That principal was set forth over a half century ago by Arbitrator Saul Wallen in *New Britain Mach. Co., 8 LA 720, 722 (1947)*:

Job security is an inherent element of the labor contract, a part of its very being. If wages is the heart of the labor agreement, job security may be considered its soul. . . .

Certainly, security in health care benefits must be considered a primary element of a contemporary Collective Bargaining Agreement, as are wages and job security. The Final Settlement Offer of the City would remove that security from the Labor Agreement, defeat the purpose of collective bargaining on the issue of health care benefits, and must be rejected.

It is the order of the Conciliator the Final Settlement Offer of the Union be implemented.

Article 36
Applicability of Increases in Wages and Benefits
Negotiated by Other Bargaining Units

For its Final Settlement Offer, the City proposes striking the language of Article 36 in its entirety.

The Union, for its Final Settlement Offer, proposes Article 36 remain unchanged.

DISCUSSION AND AWARD

The City contends the original intent of the Article 36 parity language was that it apply to health insurance benefits only. According to the City, Article 36 was the result of the City's attempt to implement one health insurance plan for the entire City.

In the view of the Conciliator, this argument is without merit. First, the plain language of Article 36 specifically provides it is applicable to wage and fringe benefit increases. Nowhere in Article 36 is language found limiting the Article to health insurance benefits.

Second, the parity language of Article 36, colloquially known as "me-too" language, has been in the Parties' Labor Agreement, unchanged, for twelve years. Evidence of record established that it was during negotiations for the current Labor Agreement that the City raised the issue of implementing one citywide health insurance plan. Thus, the me-too language was in effect years before the claimed attempt to implement a single health plan throughout the City.

Third, the Arbitration Award of *City of Vermilion, Ohio and Fraternal Order of Police/Ohio Labor Council*, FMCS 97-14920 (Sedwick, 1997), addressed the me-too language. In that proceeding the City argued pay increases granted to the OPBA's predecessor Union, which were in excess of those granted to the FOP, were not applicable to the FOP; that a greater amount of Sick Leave Conversion granted to the OPBA's predecessor was not applicable to the FOP; and that a greater Longevity benefit granted to OPBA's predecessor was also not applicable to the FOP. The City lost that arbitration. Thus, the City is well aware the Parties' negotiated me-too language was, and is, applicable to more than just health care benefits.

Finally, it was the City's claimed attempt to implement a single health care plan during the last negotiations with the FOP that amply demonstrate the purpose and effectiveness of me-too language. At the request of the City during those negotiations, and upon assurances from the City it would implement a single plan citywide, the FOP agreed to higher health care co-pays and deductibles, only to have the City grant increased health benefits to other unions and to nonbargaining employees. It was the FOP's me-too clause that prevented members of the FOP from receiving decreased health care benefits compared to other City employees.

The City also contends the granting of the parity language as proffered by the Union could result in the Conciliator's award being overturned. According to the City:

If the Conciliator were to award the Union's proposal, such award would violate ORC 2711.10 which requires any award by the Conciliator to award all issues with a ". . .

final, and definite award upon the subject matter submitted . . ." To do other wise would give rise to the ability to have the award vacated by the courts.

When asked by the Conciliator if the City had any case law construing parity language as other than final and definite, the City indicated it did not. The FOP produced a matter first heard by the SERB as an Unfair Labor Practice (ULP), and subsequently heard in the Appellate Court for Summit County.² While *Barberton* did not specifically address the issue of whether or not a me-too clause was final and definite, *Barberton* did discuss the me-too clause in the context of a ULP. At no point was a me-too clause discussed as not being final and definite.

Moreover, in this Conciliator's experience, me-too clauses are not at all uncommon in Labor Agreements involving municipalities, and, to the Conciliator's knowledge, have never been stricken as not being final and definite. The City argues the me-too clause is not definite in that negotiations with the OPBA are ongoing, and, it follows, the FOP would lock in an unknown benefit. Moreover, according to the City, the me-too clause permits the FOP to benefit from gains made by the OPBA without the risk of the give-and-take inherent in collective bargaining. The *Barberton* Court addressed those issues:

. . . For it is the force of the dominant union, the one with the clout, that normally sets the standard of pay and working conditions for the employer's other employees, both union and non-union, even without the presence of a "me too" agreement. Not to accept the practical implication of such negotiations ignores the dynamics of the collective bargaining process. Every employer must carefully calculate the impact his bargaining table concessions will have when dealing with his other employees who are not part of the subject bargaining unit.

In the instant proceedings, the FOP is not the dominant Union, and, as *Barberton* admonishes, Vermilion must keep its me-too clause with the FOP in mind when determining concession to be made during its negotiations with the OPBA.

Based upon the foregoing, it is the order of the Conciliator the Union's Final Settlement Offer be implemented.

² *In re City of Barberton*, SERB 88-008, and *SERB v City of Barberton*, Unreported, 1990 SERB 4-46 (CP. Summit, 7-31-90).

Article 43
Duration

Section 43.01 is at issue. The Union's Final Settlement Offer reads:

43.01 This Agreement shall become effective at 12:01 a.m. on the first day of January, 2007 and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2009. Wage rates shall be retroactive to January 1, 2007.

The City's Final Offer:

43.01 This Agreement shall become effective January 1, 2008 and shall continue in full force and effect, along with any amendments made and annexed hereto, until midnight, December 31, 2009.

DISCUSSION AND AWARD

The FOP requests the Conciliator grant the Fact-Finder's Recommendation regarding duration, making wages and uniform allowance retroactive to January 1, 2007 and December 1, 2007, respectively. The City argues the Parties have reached tentative agreement on issues that cannot be made retroactive for practical reasons, and is fearful if the successor agreement is made retroactive on all issues to January 1, 2007, grievances may result when an employee attempts to apply the retroactivity language of Article 43, as proffered by the Union, to some of those items.

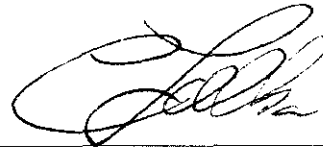
It is noted the effective dates of wage increases are addressed in Article 15, the provision in the Collective Bargaining Agreement specifically dealing with employee compensation, which will take precedence in matters regarding wages over the general language in Article 43 regarding duration. The Union's position regarding Uniform Allowance was rejected, and is not at issue under Article 43.

Additionally, City's fear regarding grievances over other contractual changes if the Collective Bargaining Agreement is made retroactive to January 1, 2007 appears legitimate, and no other reason for retroactivity, other than those previously discussed, has been advanced by the Union.

It is the order of the Conciliator the City's Final Offer be implemented.

AGREEMENTS

The Parties had previously entered into tentative agreements on Article 3 Union Recognition, Article 4 Dues Checkoff, Article 5 Nondiscrimination, Article 6 No Strike – No Lockout, Article 9 Labor Management Meetings, Article 10 Negotiations and Agreements Generally, Article 11 Discipline, Article 13 Layoff and Recall, Article 14 Interpretation of Chapter – Effect of Past Practices, Article 24 Holidays, Article 25 Sick Leave, Article 27 Sick Leave Buy Back Program, Article 28 Records of Sick Leave to be Kept, Article 29 On Duty Injuries, Article 33 Extension of Health Care and Life Insurance Benefits, Article 41 Hours of Work, Article 42 Drug-Free Workplace Act, Appendix A Agreement, New Article Waiver of Civil Service and Related Laws. At the request of the Parties and with the permission of the Conciliator, the above tentative agreements are incorporated by reference herein as the award of the Conciliator.



Colman R. Lalka, Conciliator

Dated: December 19, 2007
Madison, Lake County, Ohio