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In the Matter of Conciliation

Between

SERB Case No. 2006-MED-10-1267

Ohio Patrolmen' Benevolent  
Association

Before: Harry Graham

And

The City of Warren, OH.

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**APPEARANCES:** For OPBA:

S. Randall Weltman  
OPBA  
P.O. Box 338003  
10147 Royalton Rd., Suite J.  
North Royalton, OH 44133

For the City of Warren, OH.:

Gary C. Cicero, Director  
Department of Human Resources  
City of Warren  
391 Mahoning Ave. N.W.  
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**INTRODUCTION:** Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the end of oral argument in Warren on January 30, 2008.

**BACKGROUND:** In the Warren Police Department there are three bargaining units. These are termed the Gold Unit, the Blue Unit and the Communications Coordinators. For purposes of this matter the Communications Coordinators are not relevant. To 1996 the Gold and Blue Units were represented by the Fraternal Order of Police-Ohio Labor Council (FOP-OLC). In that year the Blue Unit came to be represented by the Ohio Patrolmen's Benevolent Association. (OPBA). This proceeding is concerned with the Blue Unit.

Historically the negotiations between the City and the two bargaining units are inextricably related. It has been the case that the outcome of one affects the outcome of the other. The linkage between the two is so great that with but minor variations the terms of the Blue and Gold Agreements are identical.

In the current round of negotiations the Gold Unit proceeded first. As occurs in Warren from time-to-time the parties were unable to reach agreement. Factfinding and Conciliation occurred. The award of the Conciliator, Alan Miles Ruben, was issued on July 30, 2007. Attention turned to the Blue Unit. As was the case with the Gold Unit, the parties were unable to reach agreement. Factfinding was had before Joseph W. Gardner. He issued his report on November 8, 2007. That report was rejected by the City. Hence this resort to Conciliation. (aka interest arbitration). In reaching this award I have referenced and considered the statutory criteria enumerated in O.R.C. Section 4117.14(G)(7). These are:

- a. past collectively bargained agreements, if any, between the parties;
- b. 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;

- c. 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; the lawful authority of the public employer;
- d. the stipulations of the parties.
- e. such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

**ISSUES:** The parties agree on those issues that are in dispute between them.

These are:

- 1. Seniority
- 2. Hours of Work
- 3. Wage Increase
- 4. Chemical and Mechanical Testing

As will become apparent several of these issues have more than one aspect to them.

### **ISSUE 1, SENIORITY**

**POSITION OF THE UNION:** This issue is concerned with Article 11 of the Agreement. The Union is proposing two changes in Article 11. At Section 7 it proposes new language. That language is:

- i. The City shall post all vacant or new non-emergency, non-ESD assignment, which is intended to be filled by a bargaining unit member for a period of three (3) days after such assignment is known to occur. All police officers may bid for the assignment through the Police Chief or his designated representative.

- ii. All bids within the three (3) day period shall be reviewed by the Police Chief and the interviews of those bidders shall occur. The assignment will be filled at the Police Chief's sole discretion.

In addition to i and ii above the Union proposes language that would allow patrol officers to bid on their daily assignments. The proposed language is:

Effective upon the issuance of the Conciliation decision ESD shift zone assignment shall be made by seniority giving assignment to the senior police officer. Compelling circumstances may justify denial of an officer's preference. The parties shall interpret "compelling" in a strict sense.

The Union points out that this language was recommended by the Factfinder. There is no reason to alter his recommendation. It should be awarded the Union contends.

**POSITION OF THE EMPLOYER:** The City is opposed to the proposal of the Union. It sees no need for it. There is no compelling rationale to award it. Flexibility in deploying officers will be reduced should it be awarded. As that is the case, the proposal of the Union in Article 11 should be rejected the City urges.

**DISCUSSION:** As noted above, Factfinding preceded this proceeding. The recommendations of the Factfinder are given great weight in Conciliation. Only if there is error, or if circumstances have substantially changed from when the Factfinding proceeding occurred, should it be expected that the recommendations of a Factfinder would be altered by a Conciliator. In order to secure an award different from that issued by the Factfinder there must be a showing of error or new evidence. Absent that, the odds are high the Conciliator will follow the recommendations of the Factfinder. This is the case even though

the Conciliator, if acting as Factfinder, might have issued different recommendations.

On this issue the Union stands on the recommendation of the Factfinder. It was not shown by the City that he erred. The City was unable to present evidence in this proceeding different from that which was available to the Factfinder. The position of the Union on this issue must be awarded.

## **ISSUE 2, HOURS OF WORK**

**POSITION OF THE UNION:** The Union is proposing an alteration to the work week. It proposes there be four (4), ten (10) hour work days. This proposal is specific to ESD officers in Warren. It is the case that Sergeants in Warren are on a ten hour schedule. As Sergeants supervise officers it is sensible to have officers on the same shift as their supervisors. Further, adoption of this schedule will result in overlapping shifts at certain times of day, e.g. in the afternoons. As this is a high activity time for officers having additional police available represents a sound deployment of manpower in the Union's view. Further, it is the case that officers overwhelmingly support institution of the ten hour shift. Of 57 eligible officers, 40 supported the change in recent poll. The Factfinder was persuaded by these arguments. He recommended the ten hour day. That should be awarded by this Conciliator as well in the view of the Union.

**POSITION OF THE EMPLOYER:** The City is opposed to institution of the ten hour day. Testimony was received from the Chief of the Warren Police Department, John Mandopoulos, indicating that a ten hour day would be very difficult to implement. As that is the case the proposal of the Union should be

rejected according to the City.

**DISCUSSION:** It is the case that the Factfinder recommended institution of the ten hour day. As noted above, the recommendation of a Factfinder carries great weight in proceedings such as this. Further, it is the case that Sergeants in Warren are on a ten hour day. The City did not show it had caused difficulties or hardship in either scheduling or manpower deployment. Under these circumstances the position of the Union is awarded.

### **ISSUE 3, WAGE INCREASE-WAGES**

**POSITION OF THE UNION:** The Factfinder recommended the following wage increases:

January 1, 2007, increase current scale by 3.3%

January 1, 2008, increase current scale by 3.7%

January 1, 2009, increase current scale by 4.0%

The Union points out that the parties have used the same group of comparison cities in Ohio for many, many years. There is agreement between them that these cities throughout the State provide good benchmark data for Warren. Examining the data shows that officers in Warren lag behind their counterparts elsewhere in the State. (Un. Ex. 4). Further, when looking at current data and data from 2004 the relationship between compensation in Warren and the average in the twelve Ohio cities deemed comparable to Warren has showed a deterioration, albeit small, in the position of Warren officers vis-à-vis their peers. That deterioration in the standing of Warren officers supports an award on its behalf according to the Union.

The City cannot make an inability to pay argument. There is in effect in Warren a levy dedicated to support the Police Department. That levy ensures its proposal can be funded according to the Union.

History bears upon this issue. Other members of the Warren Police Department, those represented by the FOP, secured increases of the magnitude proposed by the OPBA for this bargaining unit. Over the years the total compensation package provided to FOP and OPBA bargaining units has been substantially identical. Were the proposal of the City to be awarded that would not be the case. Bargaining history strongly supports its wage increase proposal in the view of the Union.

The Factfinder recommended the increases shown above. Nothing has changed to warrant altering his recommendation. As that is the case the Union insists it must be awarded.

**POSITION OF THE EMPLOYER:** The City urges a wider internal comparison group than does the Union. It points to the following wage settlements in City service:

	Wages		
	2007	2008	2009
AFSCME Local 74	1.5%	1.5%	1.5%
IAFF Local 204	2.0%	2.0%	2.0%
AFSCME Local 2501	2.5%	2.5%	2.5%
OPBA, Comm. Coord.	2.5%	2.5%	2.5%
Non-Bargaining Unit Eees.	2.5%	2.5%	2.5%

The groups above have first dollar health care. They maintained it in current round of negotiations. Those that lost first dollar care secured more, e.g. the

FOP.

Additionally, Warren is not in good financial condition, no matter what representations the Union makes to the contrary. Warren is heavily dependant on the domestic automobile industry. Delphi Packard Electric has substantially cut its workforce. Hourly wages have been reduced. General Motors has shed 1600 employees. Another major employer, Forum Health, is struggling to avoid bankruptcy. It is reducing its number of employees. Thus, under no circumstances can Warren be considered to be well-funded. At best, it is holding its own. Thus, the City makes the following proposal with regard to wages:

	1/1/07	1/1/08	1/1/09
Police officer, 3 or more years of service	\$22.06	\$22.61	\$23.18
2-3 years of service	\$19.85	\$20.35	\$20.86
1-2 years of service	\$17.65	\$18.09	\$18.54
0-1 year of service	\$15.44	\$15.83	\$16.23

Subject to rounding, these increases amount to 2.5% annually. Under the circumstances currently facing Warren, that represents the maximum the City can do and the maximum it should be expected to do. It urges its proposal be awarded.

**DISCUSSION:** As noted above, the Factfinder recommended the 3.3%, 3.7% and 4.0% that the Union stands on in this proceeding. Again, as indicated above, there is a heavy burden on a party which seeks to deviate from the recommendations of a Factfinder unless it can show error or changed circumstances. In this situation the City can do neither. Historically the Agreements for the OPBA-represented unit and the FOP-represented unit have



been essentially equal with respect to compensation changes. The proposal of the Union more nearly meets that standard than does that of the Employer. Further, the comparison data which the parties agree has historically been utilized in proceedings of this nature, supports the Union. It shows that officers in Warren have consistently lagged the average of those employed by the comparison group of Ohio cities. Recently that comparison has become more adverse to Warren, though by a small margin. That unhappy development favors an award on behalf of the Union. Significant is the fact that the OPBA-represented bargaining unit has had a historic relationship with the FOP-represented bargaining unit. Their agreements have been closely aligned with respect to their total worth. The position of the Union more nearly meets that standard than does that of the City. For these reasons it must be awarded.

### **ISSUE 3, WAGE INCREASE-OVERTIME**

**POSITION OF THE UNION:** The Union proposal on this issue is concerned with call-in pay. It proposes that when there are shifts that have less than 6 ESD officers the City be required to supplement the complement on those shifts by calling-in additional members of this bargaining unit. In the opinion of the Union such a contract clause will ensure an adequate number of ESD (patrol) officers are on duty on each shift.

**POSITION OF THE EMPLOYER:** The City is opposed to this proposal by the Union. It contends this particular issue represents a permissive, rather than a mandatory subject of bargaining. As such, it should not be reached by the Conciliator.

**DISCUSSION:** Whether or not this issue is a permissive or mandatory subject of bargaining is not for a Conciliator to decide. That issue is subject to the jurisdiction of the State Employment Relations Board should a determination be desired. More to the point for this proceeding, the Union did not demonstrate cogent rationale to warrant adoption of its proposal. The proposal of the Union is not awarded.

### **ISSUE 3, WAGE INCREASE-VACANCIES**

**POSITION OF THE UNION:** It has been the norm that when officers in Warren perform the tasks associated with a higher-ranked position they receive pay at the higher rate. The Union seeks to codify that practice in the Agreement. Its proposed language is:

Temporary-Effective January 1, 2007, a police officer who performs the Duties of a sergeant or a lieutenant, or who replaces a sergeant or Lieutenant, shall be paid the hourly rate of the rank filled for such periods As he/she performs the duties of the higher rank. Each hour the shift Sergeant is acting lieutenant and/or no sergeant is present in ESD, the Senior police officer shall be paid the difference between the sergeant's Rate of pay and the three (3) year police officer rate of pay.

The Factfinder recommended this language be included in the Agreement. As that is the case, no reason exists not to incorporate it according to the Union.

**POSITION OF THE EMPLOYER:** In the opinion of the City the current language on this matter is sufficient. It contends the proposal of the Union is unnecessary and should not be included in the Agreement.

**DISCUSSION:** The Factfinder reviewed this issue. He was convinced the Union proposal was meritorious. So too am I. The proposal of the Union on this issue is awarded.

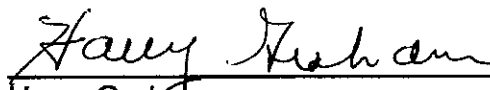
#### **ISSUE 4, CHEMICAL AND MECHANICAL TESTING**

**POSITION OF THE UNION:** Article 33 of the current Agreement deals with "Chemical and Mechanical Testing." In the opinion of the Union the current language is sufficient. No problems have arisen with it. This issue came to Factfinding. The Factfinder recommended against any change. As that was the case, no change should be awarded in the Union's view.

**POSITION OF THE EMPLOYER:** The City has an extensive proposal on this issue. It provides for fairly substantial revision of the existing language. The City points out that its proposal more nearly conforms to the chemical and mechanical testing language found in its agreements with other bargaining units. The criterion of internal comparability supports its position. As that is the case, it should be awarded according to the City.

**DISCUSSION:** The proposal of the City is unremarkable. Were I writing on a blank slate it would be looked on with favor. As repeatedly noted in this decision, I am not writing on a blank slate. Factfinder Gardner considered this issue. He recommended no change. I do not find the rationale proffered by the City sufficiently compelling to warrant disturbing the award of the Factfinder.

Signed and dated this 12<sup>th</sup> day of February, 2008 at Solon, OH.

  
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Harry Graham  
Conciliator