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STATE EMPLOYMENT  
RELATIONS BOARD

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CONCILIATION REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
February 14, 2008

|                             |   |                  |
|-----------------------------|---|------------------|
| In the Matter of:           | ) |                  |
|                             | ) |                  |
| The City of Westlake        | ) |                  |
|                             | ) |                  |
| and                         | ) | 06-MED-12-1426   |
|                             | ) | Police Patrolmen |
| Ohio Patrolmen's Benevolent | ) |                  |
| Association                 | ) |                  |
|                             | ) |                  |

APPEARANCES

For the OPBA:

S. Randall Weltman, Attorney for OPBA  
Andrew Fleck, OPBA Director  
Marcel Sorgi, OPBA Director  
Dave Carney, OPBA Negotiator

For the City of Westlake:

Gary Johnson, Attorney for the City  
Dennis Clough, Mayor

Conciliator: Dennis M. Byrne

**Background:**

The parties to this Conciliation are the police patrolmen of the Westlake Police Department represented by the Ohio Patrolmen's Benevolent Association (OPBA) and the City of Westlake. Prior to the conciliation, the parties held numerous negotiating sessions and participated in a fact-finding hearing over a wide range of issues. The Union accepted the Fact Finder's report, but the City rejected the report because it claimed that some of the Fact Finder's recommendations were not supported by the facts of the situation. The City especially objected to the recommendation that a new benefit, a firearms qualification payment, be added to the agreement. The parties continued to discuss their differences after the Fact Finder's Report was issued, and it must be noted that the report was the basis for tentative agreements on a number of issues. However, the parties could not finalize their agreement, and six (6) issues remain unresolved. The outstanding issues are: 1) Wages, 2) Firearms Qualification Bonus, 3) Shift Differential, 4) Holiday Pay, 5) Health Care, and 6) Clothing Allowance. It must be noted that many of the parties' disagreements on the remaining issues are minor, and the major stumbling block to signing a new agreement is the firearms qualification bonus payment recommended by the Fact Finder.

The Conciliation Hearing was held on January 17, 2008, in the Mayor's conference room in the Westlake City Building located at 27700 Hilliard

Boulevard. The hearing was convened at approximately 10:00 AM and adjourned at 3:00 PM.

The Ohio Public Employee Bargaining Statute sets forth the criteria a conciliator is to consider in making recommendations. The criteria, which are set forth in Rule 4117.14(G)(7), are:

- (1) Past collectively bargained agreements, if any, between the parties.
- (2) Comparison of the 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 standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (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 private employment.

**Introduction:**

Note: A brief introduction to the issues will be will given and then the Conciliator will outline his recommendation(s) for a final settlement.

**Issue:** Article XV Wages

**Union Position:** The Union demand is for a seven (7%) increase in the existing wage effective March 1, 2008, followed by a three and one-half (3 ½%) percent increase paid on March 1, 2009. The Union also demands a three and one-half

(3 ½%) percent lump sum payment paid within thirty (30) days of the signing of the new agreement for each patrolman.

**City Position:** The City is offering a three and one-half (3 ½%) percent increase paid from January 1, 2008; three and one-half (3 ½%) percent paid March 1, 2008; and three and one-half (3 ½%) paid effective March 1, 2009.

**Discussion:** The differences in the parties' positions are based on the language of ORC 4117.14(G)(11). Essentially, this rule precludes a Conciliator from recommending a retroactive wage increase without the consent of the parties. In this situation, negotiations have extended past the anniversary date of the contract's termination and therefore, the retroactivity language of ORC 4117,14,(G)(11) pertains to any recommendation for a wage increase for the first contract year. The Union's demand sidesteps this problem. However, the City's proposal means that the patrolmen would not receive any wage increase for calendar year 2007.

**Issue:** Article XV – Section 15.06 (new) Firearms Qualification Bonus

**Union Position:** The Union accepted the Fact Finder's recommendation that the patrolmen earn a yearly \$300.00 bonus for passing the firearms qualification test(s).

**City Position:** The City rejected the Fact Finder's recommendation on this issue for the first year of the prospective contract. However, that is, the City grudgingly accepts the Fact Finder's recommendation for a firearms qualification bonus starting in calendar year 2008.

**Discussion:** The Fact Finder's recommendation on this issue states, "Annually, and in accordance..." This language led to the disagreement because the word "annually" does not specify a starting date for payment of the benefit. The Union wants the benefit to begin with calendar year 2007, and the City wants the benefit to begin in calendar year 2008. However, this is actually a minor difference that does not really clarify the parties' positions on this issue.

The City objects to paying the bonus for three reasons. First, the City does not believe that "extras" should be added into the contract. The City believes that it pays a fair wage and that the patrolmen do not need bonus payments added to their base wage. Second, the City argues that the Fact Finder's recommendations lead to a situation whereby the patrolmen's first year wage and benefit increases are higher than the amount paid to other city employees. That is, the Fact Finder's recommendations lead to an internal parity problem within Westlake. Finally, the City argues that firearms proficiency is a necessary part of a police officer's job and the patrolmen should not earn an extra benefit for meeting the job requirements for any policeman.

The Union contends that the bonus is a standard benefit throughout Northeast Ohio and consequently the patrolmen's contract is substandard compared to other comparable police department contracts. Moreover, the Union contends that the Fact Finder heard all of the arguments surrounding this issue and decided that the Union's position was reasonable. The Union urges the Conciliator to accept the Fact Finder's recommendation.

**Issue:** Article XVI Shift Differential

**Union Position:** The Union accepted the Fact Finder's recommendation on shift differential pay. However, the Union demands that the new shift differential payment become effective at the start of the contract. That is, the Union demands that the patrolmen receive the new shift differential pay retroactive to March 1, 2007.

**City Position:** The City also accepted the Fact Finder's recommendation on holiday pay, but does not want to pay retroactive shift differential pay for calendar year 2007. That is, the City desires to implement the new shift differential pay plan when the contract is ratified.

**Discussion:** Both parties accepted the Fact Finder's recommendation that the shift differential be increased by a \$.10 for each hour worked. This recommendation raises the differential from the current \$.15 per hour to \$.25 per hour. The difference in the parties' positions is when the new pay scale goes into effect.

**Issue:** Article XIX Holidays

**Union Position:** The Union accepted the Fact Finder's recommendation on holiday pay. However, the Union demands that the new holiday pay proposal become effective at the start of the contract. That is, the patrolmen receive the new holiday pay retroactive to March 1, 2007.

**City Position:** The City also accepted the Fact Finder's recommendation on holiday pay, but does not want to pay retroactive holiday pay for calendar year

2007. That is, the City desires to implement the new holiday pay plan when the contract is ratified.

**Discussion:** Both parties accepted the Fact Finder's recommendation over a new premium pay holiday schedule. The difference is when the new plan goes into effect. The Conciliator has studied the Fact Finder's report and agrees with its conclusions on this issue.

**Issue:** Article XXI Health Benefits

**Union Position:** The Union wants the City's health care plan to become *effective on the date that the prospective contract goes into effect.*

**City Position:** The City demands that the new health care plan take effect on January 1, 2008 or as soon thereafter as is practicable.

**Discussion:** The parties accepted the Fact Finder's recommendation on the health plan. The difference in their positions on this issue does not regard the specifics of the health plan, but when the new plan takes effect. Because the new plan increases the out of pocket cost to the patrolmen, the Union wants to put off implementation of the new plan until the contract is signed and ratified.

The City wants the new health plan to take effect at the beginning of calendar year 2008 or as soon as practicable because of the problems involved with administering more than one health plan. That is, the City will have one health plan for all City employees with the exception of the police patrolmen and a second plan for the patrolmen. The City believes that this is both inequitable and inefficient.

**Issue:** Article XXII Clothing Allowance

**Union Position:** The Union accepted the Fact Finder's recommendation on this issue with the proviso that the allowance should be paid retroactively to March 1, 2007.

**City Position:** The City accepted the Fact Finder's recommendation with no provision for a retroactive payment from March 1, 2007.

**Discussion:** The parties both agreed to the Fact Finder's recommendation to raise the clothing allowance by \$100.00 to \$1100.00 per year payable by check to each patrolman. The only difference in the parties' positions is the Union's demand for retroactivity. The Fact Finder's recommendation contained no provision for retroactivity on this issue.

**Discussion:**

The Conciliator met with the parties and tried to mediate the dispute before holding a formal hearing. During the discussions over the various issues it became apparent that focusing on the differences in the parties' positions tended to mask the fact that there was more points of agreement on many of the issues than areas of disagreement. From an economic perspective, there was actually very little difference in the parties' positions. On most issues the disagreement was over the Union's demand that any benefit payment be retroactive to March 2007, and the City's insistence that all new and/or increased benefit payments begin when the new contract is signed.



Therefore, the major economic difference in the parties' positions is the Union's demand that sidesteps the retroactivity conundrum for calendar year 2007. During the discussion(s) on the wage issue the City maintained that it wanted to abide by the retroactivity language found in ORC 4117. However, the City also stated that it realized that the patrolmen deserved a wage increase for the 2007 calendar year. That is, the City believes that the patrolmen should not be treated differently than other City employees with respect to a 2007 wage increase. The City also recognizes that holding to the ORC's retroactivity language would probably cause significant morale problems between itself and the police officers. The result is that the Conciliator believes that the retroactivity language of ORC 4117 may be less problematic than a first reading of the parties' position statements implies. Furthermore, the Conciliator believes that the discussion on the wage issue could be generalized to most of the remaining outstanding issues.

For its part the Union argues that the Fact Finder was correct in his assessment of the situation in Westlake and that his report should be accepted, but the Union also recognizes that in general it is arguing over the distribution of the dollars in the contract rather than the number of dollars. Therefore, the Union indicated during discussions with the Conciliator that it was willing to make some changes in the final contract provisions provided that the overall settlement was comparable to the Fact Finder's recommendations. That is, both parties indicated that there was some room for compromise.

Based on his discussions with the parties, the Conciliator believes that both the Union and the City are willing to find a mutually agreeable settlement; therefore, the Conciliator is making a suggestion to the parties on a way to settle their differences and finalize their contract. The following suggestions meet the expressed desires of the Employer by eliminating the front end loading of the contract and the inclusion of a new benefit into the agreement that the City finds objectionable. The Conciliator's suggested settlement terms also meets the Union's demand that the final agreement be comparable to the settlement recommended by the Fact Finder. Consequently, the Conciliator suggests that the following terms be incorporated into the agreement and become the final and binding agreement between the parties.

### **CONCILIATOR'S SUGGESTED SETTLEMENT TERMS**

#### **Article XV Wages**

*The agreement will be retroactive to March 10, 2007. The City will increase the 2006 salary schedule by plus an amount of Twenty (\$20.00) dollars. Furthermore, the base wage rate will increase by three and one-half percent (3 ½%) on March 1, 2008 and by three and three-quarters percent (3 ¾%) on March 1, 2009.*

#### **Article XV Section 15.06 Firearms Qualification**

No Recommendation

#### **Article XIX Holidays**

Holidays will follow the Fact Finder's recommendations.

**Article XXI Health Care**

That the new health care plan be implemented as soon as practicable, but no earlier than January 1, 2008 and no later than March 1, 2008. (Given the timing of the Conciliation procedure the Conciliator suggests that the new payment schedule be implemented on February 1, 2008 if that is agreeable to the parties.)

**Article XXII Clothing Allowance**

The clothing allowance will increase by \$150.00 dollars per year retroactive to March 1, 2007. This allowance will be paid in a separate check to each patrolman as per the usual custom of the parties. (The increase in the Clothing Allowance is recommended as a way to make the value of the final agreement similar to the value of the Fact Finder's recommendations.)

**Article XVI Shift Differential**

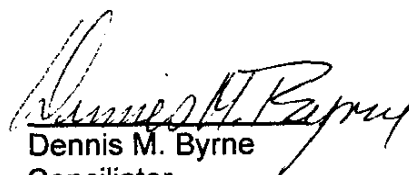
The shift differential paid to the patrolmen on the second and third shift will increase to \$.35 cents per hour retroactive to March 10, 2007.

The above paragraphs outline the complete agreement between the parties on all remaining outstanding issues. All other recommendations put forth by the Fact Finder are included in the final settlement by reference.

**AWARD:**

The Fact Finder's recommendations as modified above shall be implemented.

Signed this 14<sup>th</sup> day of February 2008, at Munroe Falls, Ohio

  
Dennis M. Byrne  
Conciliator



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Dennis M. Byrne

February 14, 2008

Mr. Edward E. Turner  
Administrator, bureau of Mediation  
State Employment Relations Board  
65 East State Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215-4213

STATE EMPLOYMENT  
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Re: SERB Case No. 06-MED-12-1426

Dear Mr. Turner:

I am enclosing the report for the City of Westlake v. OPBA Conciliation. As you will read, the differences between the parties are more philosophical than anything else. Therefore, they finally settled their problems during the mediation prior to the actual hearing. However, they requested that I write a report and make a "Conciliator's Recommendation" on a proposed settlement. I think that this was a way to get around the final offer language in ORC 4117. Regardless, the parties' agreed on the settlement.

If you have any questions, please contact me.

Sincerely,

Dennis Byrne  
Arbitrator and Professor Emeritus of Economics