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**IN THE MATTER
OF
INTEREST ARBITRATION
CONCILIATION
OPINION & AWARD**

STATE EMPLOYMENT
RELATIONS BOARD

2008 FEB -1 P 12: 36

BETWEEN	CASE NO. SERB 07-MED-06-0692
The	CONCILIATOR: JOHN S. WEISHEIT
Piqua Firefighters/253	ISSUE: Interest Arbitration/Conciliation
and the	DATE OF HEARING: January 10, 2008
City of Piqua, Ohio	DATE OF AWARD: January 31, 2008

**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Stacy Wall, Esq. Law Director Cynthia Holtzapple, Finance Dir. Elaine Barton, H. R. Dir.	William B. Hogston, Pres. Local 253 Michael A. Petier, Ass't Chief William E. Quinn, VP OAPFF

AUTHORITY

This matter was brought before Conciliator John S. Weisheit, in keeping with terms of the collective bargaining agreement between the parties, provisions of ORC 4117 and rules and regulations of the Ohio State Employment Relations Board. The matters before the Conciliator are for consideration and determination, based on merit and fact according to terms of the labor agreement and provisions of ORC 4117.

BACKGROUND

The City of Piqua, Ohio, hereinafter called the “City” and/or the “Employer” recognizes the Piqua Firefighters/Local 252, International Firefighters”, hereinafter called the “Firefighters ” and/or the “Union”, as the collective bargaining agent for the Fire Officers. Of the 213 City employees, about 150 are in one of five bargaining units represented by FOP, IAFF, and AFSCME. The bargaining unit in the matter before this Conciliator is composed of six (6) Fire Officers holding the rank of Shift Captains and Assistant Shift Captains.

The parties engaged in good faith bargaining in keeping with the terms of ORC 4117. Upon reaching a state of impasse, the unresolved issues were submitted to Fact Finding pursuant to terms of ORC 4117. The Fact Finder’s Report was not approved by the City but was accepted by the Union. The unresolved issues at the time of Fact Finding, were certain terms of the following Articles:

Article 14 - Wages

Article 17 - Sick Leave

Article 22 - Training

Article 23 - Promotions and Appointments

Article 33 - Term of Agreement

This Conciliator was appointed by the State Employment Relations Board (SERB). Prior to the convening of the Conciliation Hearing, the parties agreed to engage in a second mediation session. In the course of the interaction prior to and at mediation, the following issues were resolved and tentatively agreed to:

Article 14 - Wages*

Article 17 - Sick Leave**

Article 22 - Training**

Article 23 - Promotions and Appointments*

Article 33 - Term of Agreement**

* All terms of these Articles were resolved except for the specific section (s) set forth in the following.

** All terms in these so indicated Articles were tentatively agreed to by the parties.

The Conciliator was made aware at the Hearing that there existed outstanding procedural matters related to this case. It was agreed by all parties that the procedural issues were beyond the purview of the Conciliator and would be appropriate in another forum.

The parties affirmed interest in attempting mediation on the unresolved issues.

They agreed that the Conciliator was authorized to consider and use information attained in mediation for reaching a final determination if all remaining issues were not resolved in mediation. In addition to the oral information offered in the mediation session, the Union and Employer offered additional written documentation regarding their respective positions on the two issues remaining at impasse. Each party did timely make a single e-mail transmission to the Conciliator. Only materials timely received by the Conciliator were given standing in reaching determination in this matter.

The Hearing was adjourned after the parties indicated they had nothing additional to submit on behalf of their position regarding the remaining unresolved issues and affirmed having a fair and ample opportunity to set forth their respective position.

This Conciliation Report is based on facts provided in document and testimony introduced in mediation at the Conciliation Hearing and followup documents after the Hearing as approved by the Conciliator. Further determination in this case is made in compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria giving consideration in the making of this Award:

1. Past collectively bargained agreements 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, 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. 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 mutually agreed-upon dispute settlement procedures in public service or in private employment.

**UNRESOLVED LAST POSITION
ON ISSUES AT IMPASSE**

The last final offer of each party's unresolved issues are set forth in the following:

Issue #1) Article 14, Section 1, Wages - Retroactivity

Union Final Position: The initial wage increase is to be effective September 1, 2007.

Summary of the Union Argument

The Union contends retroactive pay is appropriate and notes that other bargaining units in the City whose negotiations went beyond the expiration date were granted retroactive pay. It further cites the "Order to Conciliate", in this case, was issued in 2007. As such, it argues, ORC 4117.14(G) (11) allows the conciliator to grant retroactive pay as proposed by the Union.

Employer Final Position: The initial wage increase is to be effective January 1, 2008.

The Employer opposes retroactivity to September 1, 2007, as proposed by the Union. It argues that the parties did not discuss retroactivity of wages involving a time extension to a previous fiscal year and there was no mutually agreed waiver entered into by the parties for such an action as required under provisions set forth in ORC 4117.

CONCILIATOR FINDING AND AWARD

ISSUE NO. 1

Issue #1 - Article 14 Section 1. Wages - Retroactivity.

The effects of retroactivity that extended into the preceding fiscal year was not addressed in Fact Finding. ORC § 4117.14(G)(11) specifically addresses this matter. Absent a mutual agreement between the parties for a wage increase to be retroactive beyond the current fiscal year, the Conciliator is limited to making the effective date retroactive limited to the beginning of the current fiscal year.

Determination

The parties did not enter into the necessary agreement to extend retroactivity to a date in the previous fiscal year. **It is determined that the Employer's position is to be included in the Contract.**

Issue #2 - Article 23, Promotions and Appointments

Union Final Position

~~Section 2. Disqualification.~~

Section 2. Promotions and Disqualification. Appointments to the promoted ranks shall be made by promotion from the next lowest rank, providing the employee considered for the promotion is qualified for the position. A fire officer shall be able to take a promotional examination with less than 12 months in their current position, but cannot be promoted until the 12 months has been served in the current position. If the person is disqualified by the Chief or City Manager, the reasons for such disqualification shall be presented in writing to the person so disqualified. A disqualification may constitute a grievance and be processed in accordance with Article 7.

- A. **Testing. Scoring from the position Captain to Assistant Chief shall be as follows:**
1. **Written Test - 50%**
 2. **Assessment Center - 50%**
 3. **Seniority Points per ORC §123.4**

The written test and the assessment center shall each be scored with a maximum score of 100%. The written test score and the assessment center score shall each be divided by two, with the results added together for the final score (before the addition of seniority points). E.g. if the written score is 80% and the assessment center score is 90% the final score will be 85%. The candidate must score at least 70% on the written test to go on to the Assessment Center. There will be no minimum passing score on the Assessment Center.

- B. **The Director of the Civil Service Commission shall appoint members in the order of their rank on the certified eligibility list, the highest score being first and so on.**

Summary of the Union Argument:

The Union contends the proposed language is necessary to protect the integrity of the promotional system. It also asserts that the language is consistent with past and current practice.

Employer Final Position: Retain current Contract language.

Summary of Employer Argument:

The City argues that the Union's proposed language will deny the City's Civil Service Commission the authority to govern promotions. The City holds that the Commission should be permitted to govern promotions as well as its other City Charter responsibilities. It contends that acquiescence to the Union's proposed language would be in direct conflict to the City Charter and, in essence, negate the need for the Commission. The City notes that a Charter

amendment adopted by the electorate supersedes the Collective Bargaining Agreement. It further cites that the Commission adopted an ordinance on December 17, 2007, adding two additional members increasing the size of the Commission from three to five members. The City argues that the new five member Commission should have the ability to exercise its authority which had been granted to it by the City Charter at the time of its passage by the electorate.

CONCILIATOR FINDING AND DETERMINATION

ISSUE NO. 2 - ARTICLE 23 Sec. 2 Promotions and Appointments

A review of the parties' actions in this matter reflects strong and diverse positions regarding the remaining issue put before this Conciliator for final and binding determination. The record put forward indicates the parties engaged in good faith bargaining throughout the negotiations process. This included their mediation efforts at Fact Finding as well as Conciliation. There are two unresolved issues before the Conciliator to be the final ingredients to the successor Collective Bargaining Agreement (CBA). In the course of reaching a final determination and establish a totality to the CBA as provided under ORC 4117, most issues addressed in negotiations were resolved by the parties.

While the Union accepted the Fact Finder's Report, the City did not. The City related its objections to the Fact Finder's Report. The Fact Finder's Report included terms that closely

related the Union's last proposal. The Union incorporated the Fact Finder's recommendation into its final offer before the Conciliator. The parties reflect a strong commitment to its final position.

The Conciliator is without authority to modify the final position ultimately put before him on an issue by issue basis. Considering the evidence presented, it is determined that the most appropriate position on each issue that is to be included in the Contract is set forth in the following section of this Opinion and Award.

This issue was reviewed in significant detail by Fact Finder Braverman. The premise and facts used in support of her determination and recommendation are found to be based on a legitimate and logical conclusion and rationale.

The Employer's strong objection to the Union's proposal reflects a position to protect the power of a separate entity to that of the City governance and management . This is not found to be a strong or effective argument in matters of collective bargaining. While accepting the argument that the Civil Service Commission is a separate entity, a review of the City Charter clearly reflects Commission function can be described at least as that of management.

ORC §4117.12 states in its premise that **"ORC 4117 is to be construed liberally for the accomplishment of the purpose of promoting orderly and constructive relationships between public employers and their employees."**

The opinions reflected in this Opinion and Award are guided by this directive.

Commission powers and authority may be from time to time altered by external conditions.

As noted, Civil Service Commissions at a local and State level were significantly altered with the advent of the Ohio Collective Bargaining Law. This is most apparent with the inclusion of final and binding grievance arbitration provisions in the resulting public sector labor agreements.

The expiring agreement between the parties specifically addresses the Civil Service rules regarding Union employee promotions and vacancies. While said language is brief and general, it is a specific term of the Agreement. The Union has offered a bona fide basis to support its concern in obtaining a change to a more specific provision regarding promotions and appointments.

Determination

It is reiterated that the Conciliator is restricted to a “last best offer” and is without authority to modify such offer unless mutually agreed to by the parties. The Union language is based on the language in the Firefighters Agreement. It is language as offered by the Fact Finder. Based on the information, actions, and facts put before this Conciliator, it is determined that the Union’s proposal is to be included in the Contract. To retain the status quo is not determined in the best interest of promoting an orderly and constructive relationship between the public employer and the employees.

It is hereby determined that the Union’s last position is to be included in the Contract.

FINDING AND ORDER

The Conciliator has determined that the following last offers be entered into the Contract between the Parties:

Issue #1 The proposal offered by the City reflecting that the wage increase is to be effective January 1, 2008.

Issue #2 The proposal offered by the Union as follows:

Article 23, Promotions and Appointments

Union Final Position

~~Section 2. Disqualification.~~

Section 2. **Promotions and Disqualification.** Appointments to the promoted ranks shall be made by promotion from the next lowest rank, providing the employee considered for the promotion is qualified for the position. A fire officer shall be able to take a promotional examination with less than 12 months in their current position, but cannot be promoted until the 12 months has been served in the current position. If the person is disqualified by the Chief or City Manager, the reasons for such disqualification shall be presented in writing to the person so disqualified. A disqualification may constitute a grievance and be processed in accordance with Article 7.

- A. **Testing.** Scoring from the position Captain to Assistant Chief shall be as follows:
1. **Written Test - 50%**
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 3. **Seniority Points per ORC §123.4**

The written test and the assessment center shall each be scored with a maximum score of 100%. The written test score and the assessment center score shall each be divided by two, with the results added together for the final score (before the addition of seniority points). E.g. if the written score is 80% and the assessment center score is 90% the final score will be 85%. The candidate must score at least 70% on the written test to go on to the Assessment Center. There will be no minimum passing score on the Assessment Center.

- B. **The Director of the Civil Service Commission shall appoint members in the order of their rank on the certified eligibility list, the highest score being first and so on.**

TOTALITY OF AGREEMENT

- This will affirm the foregoing report, consisting of **12 pages**, includes the findings and determinations set forth in this Award by the below signed Conciliator are to be made the terms in the Agreement between the parties.
- The Agreement shall include all terms tentatively agreed to by the parties prior to issues tentatively agreed to at Conciliation, all terms of the successor agreement not a subject of bargaining in the current round of collective bargaining, and the Conciliator's determination as set forth in this Award.

To the best of my knowledge, said Report and the included determinations comply with applicable provisions of the Contract between the parties, applicable Sections of ORC 4117 and related SERB Rules and Regulations.

I therefore affix my signature at the City of Galion, in the County of Crawford, in the State of Ohio, this date of January 31, 2008.


John S. Weisheit, Conciliator