

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

STATE EMPLOYMENT  
RELATIONS BOARD

2008 APR -8 P 12: 37

*07-MED-08-0799*

<b>BETWEEN</b>	<b>CASE NO: SERB 08-0799</b>
<b>AFSCME OHIO COUNCIL 8 LOCAL 3351</b>	<b>CONCILIATOR: JOHN S. WEISHEIT</b>
<b>V</b>	<b>HEARING DATE(S): March 18, 2008</b>
<b>CITY OF ATHENS, OHIO</b>	<b>AWARD ISSUED: April 7, 2008</b>

**REPRESENTATION**

by

<u><b>Employer Representatives</b></u>	<u><b>Union Representatives</b></u>
Patrick Lang, Esq. - Advocate Beverly Henderson, Personnel Dir. Kathy Hecht, Auditor	Gary Arnold, Staff Rep., Advocate Richard Ohms, Loc. Pres. Lori Zofchak, V.Pres. James Knapp

**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 parties have mutually agreed to an alternate dispute resolution procedure providing for "last best offer" final and binding arbitration. The parties complied in a timely manner with all procedural filings. 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 and evidence introduced at the Conciliation Hearing using generally accepted practices in labor interest arbitration matters.

## **BACKGROUND**

The City of Athens, Ohio, hereinafter called the "City" and/or the "Employer", recognizes AFSCME, Ohio Council 8, Local 3351, hereinafter called "AFSCME" and/or the "Union", as the collective bargaining agent in this matter for about the twenty (20) employed fire fighters. There are two bargaining units in this department: A. Fire Fighters and B. Officers, excluding the chief.

The parties engaged in good faith bargaining reaching tentative agreement on all terms of the Contract except for the three (3) provisions put before the Conciliator. The parties attained this Conciliator through the State Employment Relations Board (SERB) in keeping with terms of ORC 4117 and the provisions of Contract to the alternate dispute procedure. The parties timely submitted pre-hearing reports. The Conciliation Hearing was convened on March 18, 2008, at Athens, Ohio. The parties attempted mediation to resolve the remaining issues, however, such efforts were to no avail and matter moved forward to Conciliation. The hearing was closed upon the parties indicating they did not have any additional facts or evidence to submit and affirmed having been given a fair and ample opportunity to put forth such evidence considered relevant to their respective position.

This Conciliation Report is based on facts provided in document and testimony introduced in mediation and additional documents offered during mediation and at the Conciliation Hearing. In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this determination and 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.

The following are the last positions on the issues at impasse for each party.

**Article 13. Wages**

**Employer Last Position**

**The Wage schedule is to be increased by four percent (4%) effective November 11, 2007; effective November 2008, the wage schedule shall be increased by three and one-half percent (3.5%); and effective November 2009, the rate will increase three percent (3.0%)<sup>1</sup>.**

**Union Last Position**

**The Wage schedule is to be increased by four and one-half percent (4.5%) effective November 11, 2007; effective November 2008, the schedule will increase four and one-half percent (4.05%) and November 2009, the schedule will increase four and one-half percent (4.05%).**

**Article 19. Longevity**

**Employer Last Position**

**Employees hired or rehired after the effective date of this Agreement shall not be eligible for longevity pay.**

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<sup>1</sup> The parties have tentatively agreed that the Contract will be retroactively effective to November 11, 2007.

**Union Last Position**

**Retain current language.**

**Article 21. Insurance**

**Employer Last Position**

**Section 1-B The City will provide a prescription drug plan in which the employee pays the five dollars (\$5.00) for generic drugs, the first twenty dollars twenty dollars (\$20) for brand name drugs which have no generic equivalent, and the first forty dollars (\$40) for brand name drugs which have a generic equivalent for covered prescriptions and refills dispensed for not more than a thirty-four (34) day supply or one hundred (100) unit doses whichever is greater. For the City's mail or on-line prescription drug plan, the employee pays the first ten dollars (\$10) for generic drugs, the first forty dollars (\$40) dollars for brand name drugs which have no generic equivalent, and the first eighty dollars (\$80) for brand name drugs which have a generic equivalent, for covered prescrtiopns and refills dispensed for a ninety (90) day supply.**

**Section 1-C Plan A - A Traditional Plan**

**Effective August 1, 2008, Employees who select Plan A will pay a monthly contribution equal to 30% of the fixed costs of the health benefit plan that are in effect on April 30, 2008. Fixed costs are the stop-loss premium (single or family rate) for specific and aggregate for employee plus the monthly per employee fee for the third party administrator.**

**Effective August 1, 2009; Employees who select Plan A will pay a monthly contribution equal to thirty-five percent (35%) of the fixed costs of the health benefit plan that are in effect on April 30, 2009.**

**Plan B - Alternate Plan**

**Effective August 1, 2008: The base deductibles will be three hundred dollars (\$300) for single coverage; six hundred dollars (\$600) for an employee with one covered dependent; and One thousand fifty dollars (\$1,050) for an employee with more than one covered dependent.**

**Effective August 1, 2008: A preventive health care benefit will be added to both Plan A and Plan B. The benefit will be two hundred-fifty (\$250) per calendar year for each covered employee and spouse, and dependent children under the age of six years old.**

**Effective August 1, 2009: A preventive healthcare benefit will be added to both Plan A and Plan B. The benefit will be five hundred dollars per calendar year for each covered employee and spouse, and dependent children under the age of six years old.**

**The preventive health care benefit may be used for any routine medical tests, examinations, or physician's fees. This benefit will replace the routine testing coverage for pap tests and mammograms. Claims for preventive healthcare will not be subject to any deductibles or co-insurance, but will be paid in accordance to the usual and customary fee schedules.**

#### **Union Last Position**

**Single Insurance Coverage: Employees who select Plan A, Traditional Plan, of the Insurance Article for single coverage:**

**Contribution rates for August of 2008, shall be twenty-two dollars (\$22) per month for Single Plan coverage.**

**Contribution rates for August of 2009, shall be twenty-five dollars, and fifty cents (\$25.50) per month for Single Plan Coverage.**

**Family Insurance Coverage: Employees who select Plan A, Traditional Plan, of the Insurance Article for family coverage:**

**Contribution rates for August of 2008, shall be forty-four dollars (\$44) per month for Family Plan Coverage.**

**Contribution rates for August, 2009, shall be forty-nine (\$49) per month for Family Plan Coverage.**

**Plan B of the current provision will not change for the life of this Agreement.**

**All benefits that are currently under the insurance plan shall remain for the three (3) years of this Agreement. All benefits shall remain the same or better.**

**All other language remains current in the Insurance Article**

## **SUMMARY OF PARTY POSITIONS ON ISSUES AT IMPASSE**

### **General**

#### **Employer Position**

While not raising an argument of inability to pay, the City does argue its financial position is limited and will likely remain in a restrictive mode into the future based on recent economic trends. The City argues it is only prudent that it takes steps now to avoid financial short falls in the future. Under such conditions its bargaining position regarding the economic issues at impasse is fair and proper.

#### **Union Position**

The Union, while acknowledging the restrictive economic conditions now and projected forecast for the future exist, seeks parity of economic benefits with that of



other City employees without concessions creating dual standards of pay and benefits for members of the bargaining and incorporating a reduction of equity in equal benefits.

#### **Issue #1 Article 13. Wages**

##### **Employer's Position**

The City states that the Police Department employees and the City Workers attained wage increases greater than that offered the Fire Fighters in their most recent round of bargaining. The City acknowledged that in each of the bargaining units, the economic settlement included the City's provision regarding the removal of longevity pay for new hires.

##### **Union Position**

The Union seeks wage parity with other City employees. It notes that City workers received a 4% increase for each year of the three year contract while the Police received a 4 ½ % increase the first year, 4% the second, and 3 ½% the third. Such offers were considered by the Union as being much greater than that offered by the City to the Fire Fighters.

#### **Issue #2 Longevity**

##### **Employer Position**

The Employer contends the removal of this provision was its top priority at the bargaining table. The City states it has been successful in removing Longevity for new

hires from all other union contracts. It holds that its removal slows the rate of employee turnover in the city and will reduce the long-range costs to the Employer.

### **Union Position**

The Union contends the removal of longevity for new hires would create a second class of fire fighters and would not help to retain good firefighters. It notes that this has been the City's second attempt in three years to remove this provision from the Contract and the second time the issue has gone to Conciliation in an attempt to prevail in retaining said provision in the Contract.

## **Issue #3 Insurance**

### **Employer Position**

The Employer contends its proposal is a result of the continuing increase of healthcare costs. The rate increases proposed in the various elements of the current insurance plan would have the employees share in paying benefit costs. The Employer's employee health care plan is self-insured. It has both a stop-loss premium and an administrative services agreement. Under the City's proposal, the fire fighters would also would share a portion of these cost.

In addition, there would be changes in the benefit provisions as well as co-payment provisions as set stated in the City's Position.

### **Union Position**

The Union's proposal does include a stipulated dollar amount for party contribution of the current insurance plan. It contends that the City is self-insured and only has a Stop Loss premium.

No other union(s) within the City is paying any kind of a percentage on insurance. It argues that all other language in the Insurance Article remains current for the Contract's duration.

## **CONCILIATOR'S DISCUSSION & DETERMINATION**

### **General**

The parties have engaged in good faith bargaining throughout the negotiations process. This included the mediation efforts at Conciliation. Except for the three issues at impasse, all terms to be included in the Contract are settled by tentative agreement, withdrawal, or otherwise resolved by moving existing terms of the contract forward into this Agreement.

The position of each party represents good faith in bargaining in an attempt to come to agreement in this instant case. The Conciliator is without authority to modify the final position taken by either party in its final position on a issue by issue basis. No argument is raised regarding the ability to pay. There is a strong economic tie related to the remaining issues before the Conciliator.

Due consideration is given to the facts and evidence offered at Hearing. This includes the economic implications of the issue at impasse collectively as well as separately. There is no argument raised regarding the ability to pay. A strong economic tie is found to the remaining issues before the Conciliator.

**Issue No. 1 Article 13 Wages**

The parties are not found at a significant difference on the wage issue. The bargaining process, generally, requires concession in the course reaching finality in negotiations when all issues put before the Conciliator contains a strong economic factor. All economic issues in this instant case carry a price. Such a price is paid to retain past benefits as well as attain new and/or improved benefits. It is therefore determined that the City's last position, as set forth above is the most appropriate provision to be included in the Contract.

**Issue No. 2 Article 19 Longevity**

The keystone in this impasse is this issue. While the City seeks the removal of Longevity for new hires, the Union is the last bastion to retain the Contract benefit. The City argues long term economic benefits for the City, the Union seeks retaining a bargained right, in particular, department equity for its current and future members.

The City may well attain its objective on this issue with this bargaining unit but such will not occur at this time. The City offer in wages and insurance are not found persuasive to attain the concession sought. The City has achieved its goal on two out of three departments on the longevity issue this year. Such success was achieved in the bargaining process without a third

party neutral's intervention. In such situations that a third party neutral makes the final determination, a retention of status quo will prevail absent very persuasive rationale to remove a provision from a Contract.

The City argues it seeks to generate savings in the long run through the retirement of employees. Yet, the Union contends that no bargaining unit employee is eligible for retirement for another four years. Such argument went unrefuted by the City. Further, current contract terms providing longevity pay are not applicable for the first five years of employment.

It is therefore concluded that the current language should retain the current language in the new Contract.

### **Issue No. 3 Article 21 Insurance**

Again, the City seeks cost cutting expense with a proposal that significantly increases the cost to bargaining unit members for insurance benefits. The Employer's proposal entered the bargaining arena without adequately addressing the changes in benefit levels. A third factor was changing the Employer rate from a fixed dollar amount to a percentage.

The Union countered with an increase in employee contribution rates at fixed dollar amounts for plans A and B with a retention of current costs on other health provisions as set forth in the expiring agreement.

The health benefit changes put forth by the City to this bargaining unit were not put before the other bargaining units in the course of this round of negotiations. The City indicated that City Counsel initiated the proposal after the other bargaining units had concluded the current round of bargaining. The health care benefits and cost implications were not sufficiently discussed by the parties.

It is therefore determined that the best last offer on this issue is that as proposed by the Union.

### **Conciliator's Determination**

Considering the evidence presented, the following are considered the "last-best offer" for each of the issues at impasse between the parties.

#### **Issue #1 Article 13 - Wages**

It is determined that the Final Position of the **Employer** is to be included in the Contract.

#### **Issue #2 Article 19 Longevity**

It is determined that the Final Position of the **Union** is to be included in the Contract.

#### **Issue #3 Article 21 Insurance**

It is determined that the Final Position of the **Union** is to be included in the Contract.

## TOTALITY OF AGREEMENT

- This will affirm the foregoing report, consisting of **15 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 being retroactive as of August 12, 2007.
- Any matter presented before the Conciliator and not specifically addressed in this Determination and Award were given due consideration in the course of reaching the finding.
- The Agreement shall include all terms tentatively agreed to by the parties, issues not otherwise addressed set forth in the expiring contract, 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 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 April 7, 3008.

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**John S. Weisheit**, Conciliator

## CERTIFICATE OF SERVICE

This will affirm the a copy of the attached Opinion and Award has been submitted by USPS First Class, as of the date set forth below, to following parties:

For the Employer	For the Union	For SERB
Patrick Lang, Esq. City of Athens Law Administration Bldg. 8 E. Washington St., Suite 301 Athens, OH 45701	Gary A. Arnold AFSCME, OHIO COUNCIL #8 36 S. Plains Rd. The Plains, Ohio 45780	Edward Turner, Administrator STATE EMPLOYMENT RELATIONS BOARD 65 E. State St., 12 <sup>th</sup> Flr. Columbus, OH 43215-4213

I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC 4117 and related SERB Rules and Regulations.

John S. Weisheit, Conciliator

**Date: April 7, 2008**