

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

STATE EMPLOYMENT
RELATIONS BOARD

2008 JUL -9 P 12: 18

BETWEEN THE)
) CASE NO: SERB 07-MED-09-0941
OHIO PATROLMAN'S BENEVOLENT)
) ARBITRATOR: JOHN S. WEISHEIT
ASSOCIATION)
) DATE OF HEARING: May 27, 2008
and the)
) DATE CASE CLOSED: May 29, 2008
CITY OF ST. MARY'S)
) DATE OF AWARD: July 7, 2008

**REPRESENTATION
by**

Employer Representatives

Patrick Kline, Reg. Dir. CNA
Sue Backs, Per. Dir.
Greg Foxhaven, Chief of Police
Thomas Hitchcock, Dir. Pub. Serv. & Safety

Union Representatives

Matthew Baker, Esq. OPBA
Margene Craft, Dispatcher
Shirley Maurer, Dispatcher
Marjorie Wisener, Dispatcher

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 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.

BACKGROUND

The City of St. Mary's, Ohio, hereinafter called the "City" and/or the "Employer" , recognizes the Ohio Patrolmen's Benevolent Association , hereinafter called the "OPBA" and/or the "Union", as the collective bargaining agent for employees in the job classification of Police Dispatcher..

The parties engaged in good faith bargaining in keeping with the terms of § ORC 4117.

Upon reaching a state of impasse, the parties engaged a Fact Finder who obtained evidence, testimony, and facts used to make recommendations that could bring bargaining of a successor Contract.

The Fact Finder's Recommendation was not agreed to in its totality; however, said recommendation did attain tentative agreement during the Conciliation Hearing of issues not previously agreed to by the parties. The parties then moved to Conciliation, as provided under § ORC 4117. The parties attained this Conciliator through the State Employment Relations Board (SERB) in keeping with terms of § ORC 4117. The parties timely submitted pre-hearing reports. All terms were resolved in the bargaining process by addition, deletion, or modification of terms negotiated by the parties, except for the specific sections in the following listed Articles:

Article 17 Holidays	Article 35 Wages
Article 21 Health Insurance	Article 36 Shift Assignments
Article 24 Sick Leave	Article, New Physical Fitness Program

More than one issue was unresolved in some of the above cited Articles. The parties mutually agreed that, while there were multiple issues unresolved in some Articles, for the purpose of the Conciliator's "last best offer determination", such determination was to be made on an Article by Article basis. Such position was accepted and applied by the Conciliator .

In the course of the Conciliation Hearing, the parties reached Tentative Agreement on the following unresolved Articles :

Article 21 Health Insurance (Including provisions put forth by the Employer)
Article 24 Sick Leave (Fact Finder's recommendation of Sections 2, 9, 11, 12)
Article 35 Wages (as recommended by the Fact Finder)

The Union and Employer offered written documentation regarding their respective position on the two issues remaining at impasse. 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 they had been offered a fair and ample opportunity to offer such information considered relevant to their respective opinions..

This Conciliation Report is based on facts provided in document and testimony presented at the 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 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.

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

The last and final offer of the remaining issues:

1) Article 17 - Holidays, Sections 17.5 & 17.6

Union Final Position:

Amend Sections 17.5 and 17.6 to provide a fourth (4th) personal leave day to bargaining unit members.

Employer Final Position:

Retain Current language

2) Article 36 - Shift Assignments

Union Final Position:

Reject Employer's final proposal. Retain current Contract language.

Employer Final Position:

Modify Section 36.2 proposing beginning and ending of shifts by one (1) hour.

3) Article, New - Physical Fitness Program

Union Final Position:

Add proposed provision to be included in the Agreement.

Employer Final Position:

Reject addition of Union Proposal to agreement.

CONCILIATOR'S DISCUSSION & DETERMINATION

General

The remaining unresolved issues pose limited economic ramifications of the totality of the Contract regardless of the Conciliation outcome. The pay and insurance being resolved by the parties at Hearing leave unresolved the matters related to an additional personal leave day, a change in shift assignment and a physical exercise program for the dispatchers.

It is noted that terms of the unresolved Contract issues in this case are rarely raised to such level of importance for resolution of a successor Agreement.

It must be remembered that the parties utilizing Fact Finding under the dispute resolution procedure of § ORC 4117 must timely vote on acceptance of the Fact Finder's Recommendation in totality of the Agreement, not item by item. For final resolution in Conciliation a requires a final and binding Conciliator's determination using the "last best offer", as was applied in this instant case. Such a background of events establishes a unique pattern of considerations.

An additional factor considered relevant is that the remaining issues reflect the same or similar positions at Conciliation as that posed before at Fact Finding. Such points are given appropriate consideration in the final determination rendered in this case.

Determination, Issue by Issue

1) Article 17 - Holidays, Sections 17.5 & 17.6

Union Final Position:

Amend Sections 17.5 and 17.6 to provide a fourth (4th) personal leave day to bargaining unit members.

Argument

The Union contends its proposal to insert a 4th personal leave day is proper to establish parity with other bargaining unit employees in the police department.

It relates that the Fact Finder included the Union's position in his recommendation.

Employer Final Position:

Retain Current language

Argument

The Employer argues that the Fact Finder did not take this matter into consideration in totality of all leaves extended to the Union. It notes that this bargaining unit enjoys other amenities working a fixed schedule unlike the schedule of the police bargaining units.

Conciliators Determination

While each party's rationale is found persuasive, to a point, a review of the Fact Finder's rationale for recommending the addition of one (1) personal day is the most persuasive. His rationale for this recommendation states a quid pro quo of including a delay of the date for the wage increase to the addition to the recommendation of an additional personal day. He recommended that the effective date of the wage increase be January 7, 2008, instead of January 1, 2008, as sought by the Union. He note the four (4) day difference would apply as a cost offset between the two o issues. Fact Finder Silver notes his reasoning that such is more than enough to compensate the City for the extra personal leave day sought by the Union.

The parties reached tentative agreement regarding wages at Conciliation without discussion or rationale offered the Conciliator. At the Conciliation Hearing no discussion was offered reflecting any change in the effective date for implementing the wage.

Conciliator's Determination:

Considering the argument and the respective positions of each party at the start of Conciliation, a review of the Fact Finder's rationale and the totality of the resulting Agreement, the scale is found to tilt in favor of the Employer's last offer. To grant a finding in favor of the Union on this issue would grant a an additional four days of the wage increase then the Fact Finder recommended or the Employer offered in its final offer. Without the agreement of the parties to amend a final position, this Conciliator is without authority to grant the Union an additional personal day plus a rate increase for four days.

It is therefore determined that the Agreement is to include the final position of the Employer regarding Article 17.

2) Article 36 - Shift Assignments

Union Final Position:

Reject Employer's final proposal. Retain current Contract language.

Argument

Union members' objection to the City's proposal indicated the change in shift work time (i.e. moving each shift start time forward by one hour) would cause personal inconveniences.

Employer Final Position:

Modify Section 36.2 proposing beginning and ending of shifts by one (1) hour.

The proposal would further incorporate existing shift schedule changes and bidding practice, currently memorialized under a Letter of Agreement, into the Contract.

Argument

The City contends the issue in question is a matter of management rights. As such, it contends it is an issue that needs not be changed through bargaining but is subject to the unilateral discretion of the City. It also notes that the change of the shift schedules, by moving hours one hour forward, would put all department employees on the same shift hours.

Conciliators Determination

The Union's argument is not found persuasive. It did not successfully challenge any of the major contentions raised by the Employer for the changes it proposed. The Fact Finder's rationale for recommending the inclusion of the terms put forward by the Employer went virtually unrefuted.

While such interventions offered by the Union are found of some merit, they do not address legitimate business considerations as put forth by the City. Nor does the lack of such objections rise to a level to convince this Conciliator to override the City's management rights argument on this matter.

It is therefore determined that the Employer's final proposal should be included in the Agreement.

3) Article, New - Physical Fitness Program

Union Final Position:

Proposes adding a provision that would have the Employer pay for employee membership in an area YMCA.

Argument

The Union contends that such a provision would be a catalyst for assisting the employees maintain a level of health and well-being in the performance of work duties..

Employer Final Position:

Reject addition of Union Proposal to the agreement.

Argument

The Employer contends the Dispatchers are seeking benefits attained by Police Officers and are not necessarily applicable in the duties of Dispatchers.

Conciliator's Determination

The Union's proposal and argument are not found persuasive to support inclusion of such a provision into the Contract.

It is therefore determined that the last position of the Employer be applied in this matter.

Summation

Based on the findings and arguments offered at the Hearing the following determinations are made regarding the three unresolved issues before the Conciliator.

1) Article 17 - Holidays, Sections 17.5 & 17.6

The last position as proposed by the City is to be included in the Agreement.

2) Article 36 - Shift Assignments

The last position as proposed by the City is to be included in the Agreement

3) Article, New - Physical Fitness Program

The last position as proposed by the City is to be included in the Agreement

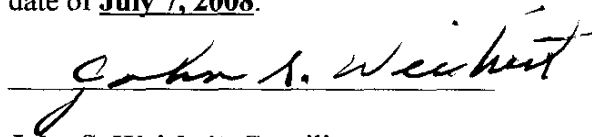
TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of 11 pages., includes the findings and determinations set forth in this Award by this Conciliator.

The Agreement shall include, by this reference, all terms tentatively agreed to by the parties prior to and directed by the Conciliator. Provisions of the expiring agreement not addressed by the parties in bargaining shall included in the Agreement in the same form and language as it appeared in the expiring agreement.

To the best of my knowledge, said Determination and Award comply with applicable provisions of the Contract between the parties, applicable Sections of § ORC 4117 and SERB Rules and Regulations.

therefore affix my signature at the City of **Galion**, in the County of **Crawford**, in the State of **Ohio**, this date of **July 7, 2008**.



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
Richard Leslie, Jr. Clemans, Nelson and Asso. 6500 Emerald Parkway Suite 100 Dublin, OH 43016-5235	Matthew Baker, Esq. OPBA 92 N. Woods Blvd. Suite B-2 Columbus, OH 43235	Edward Turner, Administrator STATE EMPLOYMENT RELATIONS BOARD 65 E. State St., 12 th 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: July 7, 2008