



STATE EMPLOYMENT
RELATIONS BOARD

CONCILIATION DECISION

2008 JUL 10 P 12: 47

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

July 8, 2008

In the Matter of:

City of Sheffield Lake)	
)	Case Nos. 07-MED-10-1075
and)	07-MED-10-1076
)	07-MED-10-1077
Ohio Patrolmen's Benevolent Association)	

APPEARANCES

For the City:

Sandy Conley, Employer Advocate
David Graves, Law Director
Tamara Smith, Finance Director

For the Union:

Kevin Powers, Attorney
Shawn A. Corr, Director for Patrolmen
Jim Mariner, Representative for Sergeants
Juliann Martin, Representative for Dispatchers

Conciliator:

Nels E. Nelson

BACKGROUND

The instant case involves the City of Sheffield Lake and the Ohio Patrolmen's Benevolent Association. The city is located in the eastern part of Lorain County and has a population of 9,371. The Ohio Patrolmen's Benevolent Association has three bargaining units consisting of five sergeants, four patrol officers, and four dispatchers.¹ The employees are covered by a single collective bargaining agreement.

The parties began negotiations in the fall of 2007 for a successor contract for the one due to expire on December 31, 2007. When no agreement was reached, Michael King was appointed as the Factfinder. He held a hearing on March 12, 2008, and issued his report on March 20, 2008. It was accepted by the union but rejected by the city. The Conciliator was notified of his appointment on April 25, 2008. The hearing was June 2, 2008.

The Conciliator is required to select one party's offer or the other without modification. The selection between the final offers is based upon the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. They 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 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, and 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;
- (d) The lawful authority of the public employer;

¹ The city also employs five part-time patrol officers and three part-time dispatchers who are not represented by the union.

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, 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 in private employment.

ISSUES

The parties submitted six issues to the Conciliator. For each issue the Conciliator will state the positions of the parties, summarize the arguments and evidence they offered in support of their positions, present a discussion of the issue, and provide his award.

1) Article 26 - Compensation, Section 1- Salary - The current contract has top rates of pay of \$46,043 for patrol officers, \$50,648 for sergeants, and \$36,702 for dispatchers. The union demands a 4.2% increase effective April 1, 2008; 3.25% effective January 1, 2009; and 3.15% effective January 1, 2010. The city offers a 3% increase effective June 29, 2008, plus lump sum payments of \$690 for patrol officers, \$760 for sergeants, and \$540 for dispatchers and 3% wage increases effective January 1 of 2009 and 2010.

Union Position - The union argues that its final offer should be selected. It points out that the top pay for patrol officers is only 86% of the average pay for six Lorain County cities and only 84% of total compensation.² The union notes that sergeants' pay is 84% of the average pay for sergeants for the same cities and 83% of total compensation.

² The union's comparable cities for patrol officers are Amherst, Avon, Avon Lake, Elyria, North Ridgeville, and Oberlin. The comparable cities for sergeants do not include Elyria.

The union contends that pay increases in other jurisdictions support its demands. It reports that pay increases for patrol officers in the six cities ranged from 2.75% to 3.75% in 2008 and were 3% and 3.75% in 2009. The union observes that pay increases are the same for sergeants except for Avon Lake where sergeants got 1% in 2009. It stresses that it needs to get more than 3% increases to start closing the pay gap with other Lorain County cities.

The union maintains that a comparison of the gross earnings of police and fire personnel bolsters its position. It indicates that gross earnings for patrol officers in Sheffield Lake in 2007 were \$54,000 compared to \$65,385 for firefighters and \$60,724 for police sergeants compared to \$85,791 for fire lieutenants. The union states that the gross earnings for patrol officers in the city are \$16,349 or 30% below the average for Avon Lake, Bay Village, and North Ridgeville while firefighters in the city are only \$4,980 or 7.6% below the average for the three cities.

The union asserts that the fire personnel got more than the 3% the city is offering to it. It points out that in 2009 paramedic pay for firefighters will be increased from \$6010 to \$6550 and from \$6611 to \$7205 for lieutenants. The union insists that paramedic pay should not be viewed as extra compensation because all firefighters are required to be paramedics.

The union claims that the city has the ability to pay its salary demands. It observes that between 2001 and 2007 the city's Star-Ohio account has had an average monthly balance ranging from \$800,000 to \$1.9 million. The union indicates that in the last seven years the account balance has never fallen below \$678,956.

City Position - The city argues that its final offer should be selected. It indicates that since AFSCME and the IAFF both agreed to the 3% general pay increases it has offered to the union, internal equity supports its position. The city acknowledges that Factfinder King recommended a greater increase but notes that it was his first factfinding and complains that he overlooked internal equity.

The city contends that while the union acknowledges that the base pay of police and fire personnel are normally comparable, its police personnel have a higher base pay than firefighters. It points out that between 2001 and 2007, patrol officers on average had a base salary that was \$1,068 more than firefighters, including paramedic pay, and that sergeants on average had base rates \$1,344 more than fire lieutenants.

The city maintains that regardless of which offer is selected, the differential between police and fire personnel will grow. It reports that if its offer is selected, the differential for patrol officers and firefighters will increase from \$1,580 in 2007 to \$1,744 in 2010 and from \$1,738 to \$1,918 for sergeants and lieutenants. The city observes that if the union's offer is selected, the differential will be \$2,528 for patrol officers and firefighters and \$2,781 for sergeants and lieutenants. It complains that the union's offer "creates an intolerable inequity."

The city questions the comparable cities selected by the union. It recognizes that all are nearby Lorain County cities but claims that they are not similar to Sheffield Lake. The city notes that among the union's six cities, including Sheffield Lake, it ranks seventh in population, eighth in municipal income tax, eighth in general fund expenditures, and eighth in department size.³

³ The city added Lorain to the union's six comparables.

The city argues that its comparable cities are more appropriate. It indicates that Sheffield Lake is more comparable to Amherst, Avon, Bellevue, Campbell, Girard, Hubbard, Huron, Oberlin, and Struthers than the cities suggested by the union. The city reports that among these nine cities, Sheffield Lake ranks sixth in population, eighth in income tax collections, and seventh in general fund expenditures.

The city contends that its pay is at or above the average for its comparables. It observes that the top pay for patrol officers in Sheffield Lake is \$46,043 compared to an average of \$45,939 for the other cities; \$50,648 compared to an average of \$51,771 for sergeants; and \$36,702 compared to an average of \$35,739 for dispatchers. The city asserts that with its 3% pay increases it will maintain its standing versus these communities.

The city maintains that its finances will be tight. It points out that in 2007 it had to borrow money to pay retroactive amounts in its 2005-2007 contracts. The city notes that in December 2006 it had an unencumbered balance of only \$68,634 compared to general fund expenditures of \$2,537,394. It worries that property tax revenues in the first five months of 2008 fell \$83,443 compared to the same time period in 2007 and that interest payments for the first four months of 2008 have fallen \$40,800 from the previous year. The city adds that fuel costs are \$21,004 higher in the first five months of 2008 than the same period of last year.

Analysis - One of the important considerations in selecting the more reasonable final offer for salaries is external comparisons. As is not infrequently the case, the parties in the instant dispute do not agree on the appropriate comparisons. The union focuses on six nearby cities in Lorain County. The city relies on cities much

further afield, which it claims have populations, department sizes, and financial situations similar to Sheffield Lake.

Not surprisingly, the parties have chosen cities that support their salary offers. The union used as its comparables six cities in Lorain County where the average top pay for a patrol officer is \$53,598 compared to the city's top pay of \$46,043. The city offered data for eight cities in Mahoning County plus Avon in Lorain County. The average top pay for these cities was \$45,939.

The Conciliator sees problems with both sets of comparisons. The comparables suggested by the union generally consist of cities which have benefited from the influx of people who work in Cuyahoga County to some of the fast-growing cities in Lorain County. The data provided by the city indicates that these cities have higher per capita incomes and tax collections than Sheffield Lake. It is not surprising, therefore, to find that pay in these communities is higher than in Sheffield Lake.

The comparables offered by the city entail a greater problem. All but one of the cities are in Mahoning County and are many miles from Sheffield Lake. Furthermore, Mahoning County has been regarded as economically distressed for many years and pay rates in the county reflect that fact. In particular, Campbell, Girard, and Struthers have per capita incomes and tax collections that are far less than Sheffield Lake and simply cannot be considered comparable to the city.

Pay increases granted by other cities is another factor considered by Conciliators in determining the reasonableness of the competing salary offers. In every geographic area, there is a hierarchy or ranking of salaries. Some cities are above average and others are below average. The hierarchy is the result of a variety of factors, including

bargaining by the parties over a number of years. If a Conciliator awards a pay increase that is similar to those being granted by other cities, the existing hierarchy is preserved. Sometimes circumstances change that dictate a change in the existing hierarchy of wages. The party who argues that the circumstances have changed bears the burden of showing the existing hierarchy is no longer appropriate.

The data on salary increases being granted by other cities is somewhat limited. The union showed that the average wage increase in its six comparable cities increased 3.17% in 2008 and 3.38% in 2009. However, these averages are based on only six cities in 2008 and two in 2009. Furthermore, they include Amherst's 3.75% increases in 2008 and 2009, which may reflect the significantly higher per capita incomes and tax collections in that city compared to Sheffield Lake. More broad-based data from the State Employment Relations Board's Annual Wage Report indicates that in 2007 the average wage settlement was 2.98% for the state and 3.06% for the Cleveland region.

Internal comparisons are also an important consideration in conciliation. In the instant case, the most significant comparison is the comparison of the pay levels for police and fire personnel in the city. The data show that in 2007 the base pay for patrol officers was \$1,580 higher than firefighters, including paramedic pay, and sergeants on average had base rates \$1,738 more than fire lieutenants, including paramedic pay. This disparity in pay exists despite the fact that the union acknowledged at the hearing that police and fire personnel customarily have the same base pay.

The pay increases received by other employees in a city are another important consideration. The record indicates that AFSCME and the IAFF agreed to the 3% wage

increases being offered to the OPBA.⁴ The union's charge that the fire personnel got more than 3% because of the increase in their paramedic pay ignores the fact that paramedic pay is regarded as part of their base pay and as such should have been increased. The increase in the paramedic pay received by firefighters and fire lieutenants is approximately equal to 9% over three years.

The factors discussed above as well as the other statutory criteria establish that the city's salary offer is more reasonable than the union's offer. First, while the pay for police personnel in the city is below that of the surrounding Lorain County cities, it reflects in part the fact that the city does not have the resources of many of its neighbors. Second, the wage increases being offered by the city are the same as were agreed to by AFSCME and the IAFF and are more or less the average increases being negotiated in Ohio. Most importantly, the union's offer creates significant problems with respect to internal equity and the usual relationship between the pay of police and fire personnel. If the Conciliator were to select the union's final offer, the difference between the base pay for patrol officers and firefighters would increase from \$1,580 in 2007 to \$2,528 in 2010 and from \$1,738 to \$2,781 between sergeants and lieutenants.

The Conciliator recognizes that despite the higher base pay for police personnel, fire personnel have significantly higher gross earnings. The difference appears to be the result of the overtime hours worked by the fire personnel to maintain the contractually required minimum manning. Patrol officers and sergeants get far less overtime because part-time officers are used to meet manpower needs. However, it would be inappropriate

⁴ The police personnel are compensated for the June 29, 2008, effective date by the city's proposed lump sum payments.

to increase the patrol officers and sergeants' base pay to compensate for the additional money earned by firefighters and lieutenant as a result of working more overtime.

The Conciliator also notes that the city's offer is consistent with its financial situation. While the city did not claim that it did not have the ability to pay the union's salary demand, it did point out that it faces a tight budget. More specifically, it noted that property tax receipts and interest income have fallen significantly at the same time that fuel costs have risen substantially. In the current economic climate, a 10.6% increase in the base pay of police personnel over three years might stretch the city's resources.

The Conciliator appreciates the fact that Factfinders' recommendations are frequently given heavy weight by Conciliators in formulating their awards. However, in the instant case, the Conciliator has concluded that he has no alternative but to disagree with the Factfinder's salary recommendation. The factfinding report briefly summarizes the key arguments of the parties but presents its salary recommendation without discussing the rationale for its recommendation. The Conciliator is unsure how the Factfinder weighed the competing considerations and is unsure whether he heard the same arguments and had the same evidence before him. In particular, it is not clear that the Factfinder appreciated the impact of his recommendation on internal equity.

Based on the above analysis, the Conciliator must conclude that while some increase in the pay of police personnel relative to salaries in other Lorain County cities might be appropriate, the city's final offer is more reasonable than the union's offer.

Award - The Conciliator selects the city's final offer. It is as follows:

Wages for bargaining unit employees shall be as set forth in Appendix A. General wage increases for the contract term are as follows (top rate for each classification):

Effective in 2008 3%
(Commencing with the pay period that includes July 1, 2008; i.e.,
commencing June 29, 2008)

Additionally, within thirty (30) calendar days of ratification of this Agreement by the parties, or the issuance of a conciliator's award, whichever is applicable, a one-time lump sum wage equity adjustment shall be paid to bargaining unit employees employed as of June 29, 2008, as follows:

Sergeant	\$760
Patrol Officer	\$690
Dispatcher	\$540

Effective January 1, 2009 3%

Effective January 1, 2010 3%

2) Article 28, Medical Insurance, Section 2 - Employee Premium

Contributions - The current contract requires an employee contribution of \$52.50 per month for single coverage and \$105 per month for family coverage. The union seeks a \$5 per month reduction in the contributions effective January 1, 2008. The city proposes to make the premium reductions effective January 1, 2009.

Union Position - The union argues that its offer should be selected. It indicates that both AFSCME and the IAFF received the \$5 premium reductions as of January 1, 2008.

City Position - The city argues that the agreed-upon reduction should be effective January 1, 2009. It states that it told all three of its unions that if negotiations were completed by the end of December 2007, it would reduce the employee health insurance premium contributions by \$5 per month. The city observes that AFSCME and the IAFF finished their negotiations prior to the end of 2007 but the OPBA did not agree to its salary proposal.

The city contends that the January 1, 2009, effective date is fair. It points out that even if its offer is selected, the OPBA will pay less of the health insurance premiums between 2006 and 2008 than AFSMCE and the IAFF. The city notes that the union's members will pay substantially less than AFSCME members and \$10 less than members of the IAFF.

Analysis - The Conciliator has concluded that the \$5 per month reduction in the employee health insurance premium contributions should be effective January 1, 2008. The primary rationale offered by the city for delaying it until January 1, 2009, appears to be an attempt to punish the union for refusing to accept its salary proposal and forcing it to go to factfinding and conciliation. The argument that the union has paid less in health insurance premiums over the last three or four years is unpersuasive without knowing the history of the bargaining by the other unions.

Award - The Conciliator selects the union's final offer. It is as follows:

The Employer agrees to pay ninety percent (90%) of the monthly cost for those bargaining unit employees who elect to receive health care coverage. The employee shall be required to pay the remaining ten percent (10%). Notwithstanding the above, the maximum employee contribution per month shall not exceed the following:

<u>Calendar Year</u>	<u>Maximum Employee Contribution</u>
January 1, 2008, through December 31, 2010	\$47.50 Single Coverage \$100.00 Family Coverage

.3) Article 29 - Uniform/Clothing/Equipment, Section 1 - Patrol

Officers & Sergeants - The current contract includes a \$650 annual uniform allowance for patrol officers and sergeants. The union wishes to increase the allowance

to \$710 in 2008, \$760 in 2009, and \$810 in 2010. The city proposes increasing the amount to \$750 in 2009.

Union Position - The union argues that its offer should be selected. It indicates that uniform allowances in the six nearby cities range from \$750 to \$1000 so that its allowance is \$100 less than the next lowest amount. The union claims that even with its proposed increase, it is unlikely the city's uniform allowance will surpass other communities.

The union states that it is offering the Factfinder's recommendation as its final offer. It points out that in factfinding it sought to increase the uniform allowance by \$100 per year to \$950 in 2010. The union claims that the Factfinder recognized the merit of its demand for an increase but recommended a smaller amount.

City Position - The city argues that its final offer is more reasonable. It states that the uniform allowances for its comparable cities range from \$650 to \$1025 and averages \$820. The city indicates that if the \$1025 uniform allowance in Struthers is omitted, the average is only \$794, which is close to its proposal.

Analysis - The Conciliator believes that the uniform allowance for patrol officers and sergeants should be increased to \$710 in 2008, \$760 in 2009, and \$810 in 2010. This conclusion is supported by the comparable data offered by the city that shows that its uniform allowance is currently \$170 lower than the average for its comparable cities and the fact that the differential will grow as other cities agree to increase the benefit. While uniform allowance for fire personnel may not have been increased, their uniforms are less expensive than for patrol officers and sergeants.

Award - The Conciliator selects the union's final offer. It is as follows:

All employees covered by this Agreement shall receive uniform allowances of \$710 in 2008; \$760 in 2009; and \$810 in 2010 and thereafter.

4) Article 29 - Uniform/Clothing/Equipment, Section 1 - Dispatchers -

The current contract includes a \$650 annual uniform allowance for dispatchers. The union proposes increasing the allowance to \$675. The city wishes to retain the current amount.

Union Position - The union argues that its final offer ought to be selected. It observes that the Factfinder recommended increasing the dispatchers' uniform allowance to \$675.

City Position - The city argues that there is no justification for increasing the dispatchers' uniform allowance. It points out that most of its comparable cities either do not require dispatchers to wear uniforms or they provide them. The city notes that only three of its comparable cities have uniform allowances for dispatchers and that the average is \$533, which is less than the current allowance in Sheffield Lake.

Analysis - The Conciliator believes that the uniform allowance for dispatchers should remain at \$650. The comparable data supplied by the city indicates that only three of its comparable cities have uniform allowances for dispatchers and that the average for those three is \$117 less than it is in Sheffield Lake. In addition, the Conciliator finds no other rationale for increasing the allowance.

Award - The Conciliator selects the city's final offer. It is as follows:

Dispatchers shall receive a uniform allowance in the amount of six hundred fifty dollars (\$650) each year. The uniform allowance for each year shall be paid on or about April 1 of each year.

5) Article 31 - Layoff, New Section 6 - Subcontracting - The current

contract has no restriction on subcontracting. The union proposes a number of limitations. The city agrees to language that would restrict the contracting out of the work normally performed by patrol officers and sergeants, except for the reference to reducing “regular overtime,” but rejects the language restricting the contracting out of the work of the dispatchers.

Union Position - The union argues that its final offer ought to be selected.

It points out that it wants the same level of protection against subcontracting as the IAFF and that it is proposing the language from its contract. The union notes that its proposal was recommended by the Factfinder.

City Position - The city argues that its position is more reasonable. It

questions whether the union is serious about its proposal. The city points out that the union’s initial proposal simply stated that it would offer language limiting subcontracting but did not do so until its pre-hearing statement submitted prior to the factfinding hearing. It further complains that the union offered no explanation for the need for the language it seeks.

The city contends that the restriction on subcontracting in the IAFF contract is the result of bargaining. It claims that it explained at the factfinding hearing that there was a quid pro quo for the restriction on contracting out work. The city asserts that in return for the language the union is seeking, the IAFF agreed that firefighters and lieutenants would obtain and maintain paramedic certification.

The city rejects the subsection that prohibits the elimination of “regular overtime.” The city claims that “regular overtime” is unique to the fire department and a

reference to it in the OPBA contract would create disputes because there is no definition of what constitutes “regular overtime.”

The city maintains that the dispatchers are a different matter. It claims that it cannot commit to maintaining the same level of service and that it needs the ability to discontinue dispatching. The city asserts that once language is in the contract, it is hard to get it out.

Analysis - The Conciliator must select the city’s final offer. First, the union’s offer prohibits contracting out if it reduces “regular overtime” but it does not define it. For firefighters “regular overtime” refers to overtime created by the nature of their scheduling process. Second, the union’s offer might prohibit the city from considering alternatives to doing its own dispatching. While the Conciliator believes that the city may be unlikely to subcontract the work, economic uncertainties may force the city to consider doing so.

Award - The Conciliator selects the city’s final offer. It is as follows:

Section 1. The City hereby agrees to meet and confer with the Union prior to awarding a subcontract for any work which would, in the normal course of City business, be performed by Sergeants or Patrol Officers. The extent of the work so subcontracted shall not cause:

1. Lack of work for full-time bargaining unit employees;
2. Any full-time bargaining unit employees to be laid off.

Section 2. The City hereby agrees to meet and confer with the Union prior to awarding a subcontract for any work which would, in the normal course of City business, be performed by Dispatchers.

In the event it is determined necessary to discontinue dispatch services, the City agrees to provide at least sixty (60) calendar days advance notice of any such discontinuation.

6) Article 36 - Duration of Agreement - The current contract states that it represents the complete agreement of the parties; that the contract has a three-year term ending December 31, 2007; that it becomes effective upon ratification by the union and execution by the city or upon the issuance of a Conciliator's award; that a request to negotiate must be given six months prior to expiration of the contract or it will be extended for one year; and that once a request to negotiate is filed, the contract remains in effect until 48 hours notice is given to terminate it. The city proposes a number of changes including that the contract takes effect either upon ratification by the city rather than execution by the city or 30 days after the submission of the agreement to the legislative body. The union seeks to replace the current contract provision with a simple statement that the contract commences on January 1, 2008, and ends on December 31, 2010.

Union Position - The union argues that the language sought by the city is unnecessary. It indicates that the statute includes a process for filing a notice to negotiate. The union characterizes the six-month notice requirement as "weasel words," which are designed to allow the city to extend the agreement. It adds that while prior agreements have required the parties to begin negotiations in July, it has never happened.

City Position - The city argues that its proposal reflects the problems that occurred after the last negotiations. It states that following the issuance of the Conciliator's award, there was a dispute about when it would be effective.

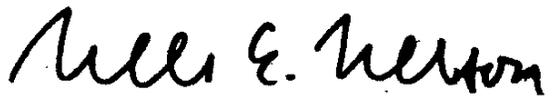
The city rejects the union's charge that its proposal to require a notice to negotiate in July amounts to "weasel words." It points out that in the last negotiations the contract

was not finalized until December 2006. The city claims that its proposal is the current language in all three of its contracts.

Analysis - The Conciliator faces a dilemma. The issue as presented by the parties includes much more than the starting and ending dates of the contract. It includes language from the prior agreement indicating that the contract represents the complete agreement between the parties and language establishing procedures relating to the commencement of negotiations as well as new language for determining when a contract takes effect. While the Conciliator is inclined to award the city's proposed language regarding the commencement of negotiations and the effective date for a negotiated agreement or a Conciliator's award, he cannot do so. The city's offer has an effective date of June 29, 2008, which conflicts with the effective dates of the final offers he has selected relating to health insurance premiums and the uniform allowance for patrol officers and sergeants.

Award - The Conciliator awards the union's final offer. It is as follows:

The agreement shall be in full force and effect beginning 1/1/08 to and including 12/31/10.



Nels E. Nelson
Conciliator

July 8, 2008
Russell Township
Geauga County, Ohio

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