

STATE EMPLOYMENT
RELATIONS BOARD

2009 MAR 23 P 2:37

IN THE MATTER OF IMPASSE X
X
BETWEEN X
X
CITY OF LIMA, OHIO X
X
AND X
X
FRATERNAL ORDER OF POLICE X
OHIO LABOR COUNCIL, INC. X

AWARD OF
THE CONCILIATOR

SERB FILE NOS.: 2008-MFID-04-0448, 0449, 0450

HEARING: February 25, 2009: Lima, Ohio

CONCILIATOR: William C. Heekin

APPEARANCES

For the City

Donald J. Binkley, Clemans/Nelson & Associates

For the FOP/OLC

Dennis Sterling, Staff Representative

ADMINISTRATION

By way of a letter dated January 6, 2009, from the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as conciliator in order to resolve a successor contract, negotiations impasse. Accordingly, on February 25, 2009, and following receipt of pre-hearing submissions, a conciliation hearing went forward where testimony and document evidence was presented. The record was closed at the conclusion of the hearing and the matter is now ready for the issuance of a conciliation award.

BACKGROUND

This negotiations impasse dispute comes to the undersigned following the issuance of a fact finding report dated December 19, 2008, by Fact Finder Harold Paddock. The parties ("the Parties") involved are the City of Lima ("the City") and the Fraternal Order of Police, Ohio Labor Council ("the FOP/OLC"). The latter is the recognized and certified collective bargaining representative regarding the three instant Police Department bargaining units. Included in these units are sworn police officers below the rank of sergeant, detectives, dispatchers, full-time correction officers, and I.D. officers. Together, they total approximately seventy employees in number. Prior to the December 9, 2008, fact finding hearing, the Parties met on a number of occasions in order to negotiate the terms of a successor collective bargaining agreement.

In addition and while noting that the Fact Finder is determined to have fully considered the applicable ORC 4117.14 criterion, this provision of Ohio law states as follows:

* * *

- Past collectively bargained agreements between the parties;
- 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:

- 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.
- The lawful authority of the public employer.
- Any stipulations of the parties.
- 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 the public service or in private employment.

* * *

DISCUSSION AND FINDINGS

I ARTICLE 18 WAGES

The FOP/OLC's final offer: Effective January 1, 2009, a three percent (3.0%) general increase above 2008 rates; effective January 1, 2010, a two and one-half (2.5%) general increase above 2009 rates; and effective January 1, 2011, a two percent (2.0%) general increase above 2010 rates.

The City's final offer: The fact-finder's recommendation. A one and one-half percent (1.5%) general increase effective January 1, 2009; a one and one-half percent (1.5%) general increase effective January 1, 2010; and a two percent (2.0%) general increase effective January 1, 2011.

It is determined that the City's final offer - the recommendation of the Fact Finder - be adopted.

Accordingly, it is hereby directed that there be a 1.5% wage increase for 2009 retroactive to January 1, 2009, a 1.5% increase for 2010, and a 2% increase for 2011.

The backdrop for reaching this determination is basically the same as that set out by the Fact Finder in the following passage contained in the third page of his report:

Both sides recognize and it is common knowledge that the United States, the State of Ohio, and local government units are having difficulties in funding their operations due to an economic downturn in the American economy. Ohio is particularly hard hit due to its historic reliance on manufacturing and "rust belt" type industries. Lima is the county seat of Allen County in northwestern Ohio, an area having some economic issues with a declining manufacturing base. Both sides presented considerable evidence and background information on the state of the local economy in Lima and the surrounding vicinity. Current projections, which are at best educated predictions about an uncertain future, are that Lima will experience a decline in tax receipts through lower city income taxes and other forms of civic revenues. The City has foreseen these types of difficulties and reduced the city payroll in several departments through attrition over the past few years. The City still envisions possible budget shortfalls in the future.

The FOP points out accurately that good wages are an incentive to good retention rates among city employees including police officers, that other cities in the area are paying their officers competitive wage increases, that comparable size cities elsewhere in Ohio have attractive wage packages for their officers, and that the City budget has been described locally as stable. Statistics submitted by the FOP show that the proposed 3.0% across the board increase compares well with a Social Security cost of living increase of 5.8%, United States Department of Labor consumer price index increase of 3.7%, and a computed Midwest cost of living increase of 5.9%. It was pointed out at the hearing that because of the way the biweekly paydays fall in the calendar that there would be 27 pay days in 2009 instead of the usual 26, leading to an automatic 1/26 pay increase for that year.

The City presented data indicating a possible major decrease in Local Government Funds, a contribution or form of revenue sharing from the State of Ohio to local government units, and a decline on investment income due to both lower investment interest rates and a declining stock market. Certain revenue shortfalls pop up on a delayed basis as items, such as lower withholding taxes on wages, trail by some months the actual occurrence of layoffs or business closings. It was noted that the City has no plans for capital expenditures and that over half the police cruisers in the fleet have over 100,000 miles on them. The City projects a decline in tax and other income of somewhere between \$700,000 and \$800,000 in 2009.

* * *

With the evidence presented at the conciliation hearing apparently being little different as compared to that which was established at the fact finding hearing held on December 9, 2009, it is worth pointing out that there was evidence presented in conciliation that City tax collections fell 8.08% regarding the month of December, 2008 and 6.057% regarding the month of January.

2009. Thus, in the end there is no basis upon which the undersigned can do other than direct the adoption of the Fact Finders' recommendation on wages.

II
ARTICLE 25
INSURANCE

The FOP/OLC's final offer: Retention of the current health insurance system with an additional \$5.00 per month for single and family coverage in each year of the contract regarding the individual employee contribution. Thus, maintain a fixed monthly employee cost provision as opposed to the monthly employee contribution being determined each year through use of an established COBRA formula.

The City's final offer: The fact-finder's recommendation. Have the FOP/OLC represented units join with all other City of Lima employees whose cost for health insurance is determined each year through the use of an established COBRA formula (80% City/20% employee cost sharing for increases up to 10%, and a 10% cap on the maximum the employee would have to pay on any annual increase).

It is directed that the City's final offer – the recommendation of the Fact Finder – be adopted.

In doing so, the undersigned essentially concurs with the rationale of the Fact Finder as set out in the following passage contained in the fifth and sixth page of his report:

* * *

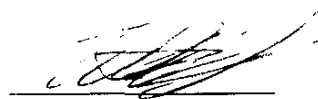
The FOP at the hearing advanced the position that Unit members need to have the certainty of knowing what their monthly health care contributions will be throughout the contract period. The FOP makes the point that police officer families need to know their health care costs in advance for budgeting and fiscal stability purposes.

The Fact Finder would note that all citizens, regardless of their employment, would benefit from family cost stability and exact predictability of monthly expenditures. The Fact Finder cannot determine any distinction or difference between police and non-police families or between members of different City bargaining units that would justify differential treatment of FOP unit members under the system the City has in place of other union members and other employees. The Fact Finder is cognizant of ORC 4117.14(G)(7)(b) making comparison to other public and private workers doing comparable work a factor to be considered in making recommendations. Because fire fighters, supervisory police officers, and employees in other bargaining units are subject to the COBRA based formula and some do comparable work in terms of facing work

related hazards, the Fact Finder believes that police officers in these three FOP units in this proceeding could and should be treated equally as compared to other City bargaining units.

* * *

Therefore, the undersigned concurs with the Fact Finder's determination as to the ORC 4117.14(G)(7)(b) "comparable work" standard being of key importance, in light of the fact that all other City employees are covered by the same health insurance plan as proposed here by the City. In other words, in addition to the non-represented employees, it is compelling that all of the other City employee bargaining units represented by the IAFF, AFSCME, and the FOP/OLC are covered by the same plan with all of its relevant features: a plan which is inclusive of a COBRA formula that calculates the employee cost share for a given year. Furthermore, and although not guaranteed to continue, support for this directive is gathered from the fact that the City's health insurance plan -- including the COBRA formula -- has over the past several years resulted in lower employee costs as compared to what these Police Department, bargaining unit employees have been required to pay by way of the prior fixed cost arrangement. Accordingly, this is seen as a further demonstration of the soundness of this health insurance plan, inclusive of the COBRA formula, that has covered all other City employees for a number of years. Importantly, this plan was the product of years of consultation, development, and now experience.



William C. Heekin
March 21, 2009
Cincinnati, Ohio

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STATE EMPLOYMENT
RELATIONS BOARD

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March 21, 2009

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FOP/OLC
Staff Representative
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Don Binkley
Regional Manager
Clemans Nelson & Associates Inc.
417 North West Street
Lima, OH 45801

RE: SERB Case Nos.: 08-MED-04-0448, 0449 and 0450; City of Lima -- FOP/OLC;
impasse/conciliation

Gentlemen:

Enclosed, please find two copies of the Conciliation Award regarding the above captioned matter. Also enclosed is a copy of the INVOICE.

It has been a privilege to have served as conciliator.

Cordially yours,



William C. Heekin

WCH:bwh

enclosure

cc: Edward E. Turner (w/enclosure) ✓