

STATE EMPLOYMENT RELATIONS BOARD

2009 AUG 20 A 10:44

THE CITY OF MAUMEE

- AND -

FRATERNAL ORDER OF POLICE/OHIO LABOR COUNCIL, INC.

SERB CASE NOS: 08-MED-09-0881
 08-MED-09-0882
 08-MED-09-0883

CONCILIATOR'S OPINION AND AWARD

Appearances

For The City

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For The Union

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Sergeant Representative
Dispatch Representative
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INTRODUCTION

The parties to this conciliation proceeding are the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter referred to as the Union, and the City of Maumee, hereinafter referred to as the City or the Employer. Three bargaining units are party to the dispute consisting of the following job classifications: Patrolman; Sergeant and Lieutenant; Telephone and Radio Operator and Animal Control Officer. These classifications do not include Line Lieutenant, all part-time employees; and seasonal and temporary employees. There are approximately fifty-four members in the above-mentioned bargaining units: Lieutenant (1), Sergeants (8), Patrolmen (33), Radio and Telephone Operators (11), and Animal Control Officer (1).

The parties have engaged in accordance with procedures specified in Ohio Revised Code Section 4117.14(C)(3). The parties selected this Conciliator to issue findings as to all unresolved issues at impasse.

In accordance with statutory requirements, the parties submitted five (5) issues for consideration. These issues include the following matters: Article 15 – Vacation Leave; Section 32.03 – Longevity; Article 56 – Salary and Compensation; Article 611 – Drug/Alcohol Testing; and Article 62 – Employee Assistance Program (EAP).

All other issues were resolved prior to the date of the conciliation hearing, which was held on June 17, 2009 at the City of Maumee's administrative building. Per the mutual agreement of the parties, all tentative agreements promulgated prior to the conciliation hearing are hereby formally incorporated into this Award.

These disputed matters were reviewed by this Conciliator by employing criteria specified in Ohio Revised Code, Section 4117.14(C)(4)(e), Section 4117.14(G)(7) and Section 4117.14(g)(7)(a)-(f). These guidelines include in pertinent part:

1. Past collectively bargained agreement, if any, between the parties;
2. Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those uses related to other public and private employees doing comparable work, giving consideration to factor 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. The stipulations of these parties;
6. Such other factor, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the 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.

Each of the above-mentioned factors were considered and given appropriate weight when deemed relevant by the Conciliator.

Four issues remain at impasse and were presented to the Conciliator:

1. Article 15 – Vacation Leave
2. Article 32 – Longevity Pay
3. Article 56 – Compensation
4. Articles 61 and 62 – Drug/Alcohol Testing

The following Opinion and Award will summarize the parties' particular positions concluding with the Conciliator's binding award.

BACKGROUND

The facts surrounding the Employer's position, for the most part, are not in dispute. The parties, however, diverge in terms of focus. The Union prefers to acknowledge the steady-state condition of the employer's financial condition, while the Employer wishes to emphasize the perilous financial concerns it may face in the future. At the present time, the Employer is not arguing an "inability to pay." Rather, it offers a series of proposals, which seek to sustain the bargaining units' relative position vis-à-vis internal and external comparables.

The income tax serves as the primary source for payment of general operating expenses. Presently, the Employer levies a 1.5% income tax, with 100% credit for income tax paid by residents to communities where their employer is located. One percent (1%) is placed in the "A" Income Tax Fund and used primarily for operating expenses. The remaining one-half percent (.5%) is placed in the Income Tax "B" Fund, which is restricted for the most part to capital improvement expenses. It should be noted that City Council can increase funding to the General Fund by transferring funds from the Income Tax "A" Fund.

After experiencing a history of extensive economic success and growth, in 2005, income tax collections began to level off. In 2007, the City realized a reduction of tax revenue. This condition was due, in significant part, to economic difficulties being experienced by the automotive industry and automotive suppliers. As a consequence, recent operating expenses have exceeded new revenue received by the Income Tax "A" and General Funds. As of December, 2008, the combined Income Tax "A" and General Funds were \$1.5 million less than fund balances in 2007.

At the time of the parties' fact-finding on February 25, 2009, the city projected a flat revenue trend. Therefore, it assumed that fund balances would continue to erode at a faster rate if expenditures remained at current levels or somehow exceeded the status quo.

As noted by the Fact-Finder in his report, the flat revenue projection developed in 2008 did not consider "the impact of the severe decline in the national, state and regional economies which began in Fall 2008 and continues today." These conditions, in the Conciliator's opinion, should play a significant role in any analysis of the parties' positions. To acknowledge their existence and base subsequent analyses on a flat revenue paradigm appears inconsistent.

Since the fact-finding hearing and report, the City's financial position has eroded dramatically. The flat revenue position has been totally refuted through May of 2009. The income tax collection has decreased by \$535,000 or approximately 7.75% as compared to the same time period in 2008. Interest income has decreased by \$439,000 or an 86% reduction in interest income revenue for the same time period. Investment fund interest income has fallen dramatically as the recession has dampened positive returns.

Several bankruptcies have taken place since the Fact-Finder's report: General Motors, Chrysler and General Growth Properties, the City's new mall. These negative realities have made the local economy quite uncertain. Car dealerships and automotive suppliers anticipate negative trickle-down outcomes impacting the City's revenues.

Dana Holding Corporation, a significant community revenue generator, emerged from bankruptcy on May 11, 2009. Standard and Poor's lowered its corporate credit rating, which indicates a potential breach by Dana of 2009 loan covenants.

The City provides "outside" dispatch services to other municipalities. These revenues help subsidize the \$877,890 annual cost of the city's dispatch operation. Several municipalities, however, have modified their contractual relationship with the City.

The Village of Waterville did not renew its contract causing a loss of \$230,155. In addition, Monclova Township has renewed its service contract at a reduced rate.

None of these economic contingencies were refuted by the Union. As such, in the Conciliator's view, the present and future economic condition of the City is quite precarious impacting the finding and awards to be discussed in the *forthcoming sections of this Opinion and Award*.

Comparables are also of critical import to the forthcoming analysis. The record unequivocally indicates that internal comparability has been a benchmark principle adhered to by the parties since 2000. The FOP, IAFF and AFSCME Unions have accepted the same or substantially similar compensation and other *benefits when negotiating with the City. It is axiomatic that bargaining history of this sort is usually given great credence by a Conciliator since it represents a practice established and sustained by the parties. Deviations can be developed, however, if certain unique situations mandate a deviation from the pattern. Otherwise, pattern bargaining by internal comparable bargaining units are often sustained. Typically, internal bargaining units offer the best comparisons because they are impacted by identical market conditions and constraints.*

UNRESOLVED ISSUES

Article 15 – Vacation Leave

The Union's Position

The Union seeks to maintain the current language, and strongly opposes the two-tiered system proposed by the City. Comparable external municipalities support the Union's position. The normal vacation accrual is 240 hours for 25 years of service. Also, none of these municipalities have negotiated a two-tiered system for new hires, which lowers the years of service for accrual purposes, and simultaneously lowers the maximum amount accrued to 200 hours per year.

Under Section 15.08, moreover, vacation leave cannot be taken if such leave causes a shortage on any given shift. These instances allow the City to *deny vacation leave; thus eliminating overtime payments to employees filling these vacancies.*

The City's Position

The City proposes to modify this provision, but does not wish to impact current employees who will retain their current status. Only employees hired after January 1, 2009 would have their vacation entitlement restricted to 200 hours.

The City views this proposal as a way to establish certain long-term cost savings. Internal comparables indicate the proposal should be adopted. Two other bargaining units, AFSCME and IAFF, have agreed to an identical proposal. Bargaining history supports a pattern bargaining profile, which justifies the proposed inclusion of a two-tier vacation system.

THE CONCILIATOR'S AWARD – ARTICLE 15 – VACATION LEAVE

From the evidence and testimony adduced at the hearing, the Conciliator selects the City's proposal for inclusion in the successor agreement. The following language shall be incorporated:

VACATION LEAVE

ARTICLE XV

Section 15.01

Employees shall be entitled to vacation leave as follows:

1 through 6 years of continuous service.....80 hours
7 through 13 years of continuous service....120 hours
14 through 19 years of continuous service...160 hours
20 or more years of continuous service.....200 hours
25 or more years of continuous service.....240 hours

Section 15.02

Employees hired after January 1, 2009, shall be entitled to annual vacation leave as follows:

1 through 6 years of continuous service.....80 hours
7 through 13 years of continuous service....120 hours
14 through 19 years of continuous service...160 hours
20 or more years of continuous service.....200 hours

Internal comparability requires inclusion of identical language agreed to by the AFSCME and IAFF units. The Union was unable to properly rebut this proposition.

The Conciliator, moreover, does not view this benefit any differently than any other benefit negotiated by the parties. This selection also retains the status quo for employees hired before January 1, 2009; and their relative standing among other external comparable municipalities.

Section 15.02 represents a valid attempt, based on existing sliding economic conditions, to forestall a future economic downturn. The economic evidence and testimony provided by the City clearly supports this outcome.

Article 32 – Longevity Pay

The Union's Position

The Union argues that current language should be maintained. Presently, senior employees hired before January 1, 1983 are grandfathered into a percentage based longevity pay system. As such, they realize greater benefits than less senior employees compensated on a flat-rate basis. Four bargaining unit members with at least twenty-six (26) years of service enjoy these enhanced benefits.

The language, itself, was negotiated prior to 1983. Employees agreed to much smaller payments during their formative years, with larger distributions as their seniority accrued. Therefore, it would be unjust to freeze these benefits at the existing 2008 levels.

The Employer's Position

The Employer seeks to freeze the current percentage longevity pay at the 2008 level for employees hired on or before January 9, 1983.

Comparability was again referenced by the Employer. Other internal comparable bargaining units have accepted the proposed freeze. Parity should, therefore, be retained.

Equity considerations further support this proposal. The present system allows a small number of employees to realize a significantly greater benefit allotment than less senior bargaining unit members. The differential approximates \$6,000 per year.

THE CONCILIATOR'S AWARD – ARTICLE 32.03 – LONGEVITY

The Conciliator resolves to support the Union's position. The status quo shall be retained without any change in the amount received by senior bargaining unit members. Here, bargaining history is viewed as more important than internal comparables. The group of impacted employees are uniquely positioned in terms of the contested benefit; causing an exception to the general rule.

This longevity benefit impacts a small group of employees who bargained a benefit with long-term consequences; less now for a significant benefit in the

future. As such, the record supports a ruling which allows these senior employees to reap the benefit of their bargain.

Articles 56.01 and 56.04 – Salary Compensation

The Union's Position

The Union's wage proposal reflects the Fact-Finder's recommendation, and contains a number of components: a three percent (3%) wage increase retroactive to the first pay period commencing in January of 2009, and a two percent (2%) wage increase effective with the first pay period in 2010. The third year, 2011, will be subject to a wage-only reopener, with negotiations initiated at the option of either party by giving written notice to the other party between September 1 and October 1, 2010. Also, the City's two-tier wage proposal was rejected by the Union.

The external comparables support the wage proposal. There is still a substantial salary gap. Sergeants and ACO members are the lowest paid when compared with external comparable negotiated outcomes. Also, out of seven comparable municipalities, Patrolmen rank 5th while the Dispatchers rank 4th.

Actions engaged in by the City have eroded the employees' opportunity to earn additional compensation. Overtime has been dramatically reduced by virtually eliminating court time for Officers, and Bike Patrol has had overtime opportunities eliminated during every pay period.

These and other changes have resulted in a substantial decrease in overtime compensation. Overtime data for 2008 and a portion of 2009 indicate *the continuation of this downward trend.*

As overtime opportunities have decreased, employees' out-of-pocket costs have increased. Recently, co-payments and deductibles have increased. Employees' cost for prescription medication has also increased 100% for generic and 67% for name brands.

The Union is opposed to a two-tier wage system. It cannot foresee different compensation schemes for bargaining unit members performing identical work. This proposed scheme would further deteriorate the bargaining units' wage status when compared with other comparable municipalities.

Pattern bargaining should not apply in this instance. The City is merely *wishing to apply a pattern established by weaker and smaller bargaining units.* In prior negotiations, other bargaining units received the same benefit and wages negotiated by the FOP/OLC.

The City's Position

The City seeks to sustain internal consistency by proposing a *compensation scheme which reflects those accepted by AFSCME and IAFF.* It consists of the following elements:

Section 56.01

- 2009: \$750 lump sum signing bonus, not included in the base wage.
- 2010: 3% lump sum payment, not included in the base wage.
- 2011: 2% base wage increase or, at the election of the Union, to re-open negotiations for a base wage increase. As long as such notification of the re-opener is made, in writing, to the City prior to October 1, 2010. Such re-opener negotiations, if held, shall be subject to the Dispute Resolution Procedure set forth in ORC 4117.

The City, moreover, proposed a second tier wage step schedule for employees hired after January 1, 2009. The tiered wage schedule would be implemented in the following manner:

Section 56.04

<u>Step</u>	<u>Patrolman</u>	<u>Sergeant</u>	<u>Operator</u>	<u>ACO</u>
Entry	\$45,018	\$50,340	\$38,375	\$32,164
After 1 yr.	\$46,593	\$52,102	\$39,718	\$33,290
After 4 yrs.	\$48,224	\$53,925	\$41,109	\$34,455
After 8 yrs.	\$51,659	\$57,766	\$44,036	\$36,909
After 12 yrs.	\$57,275	\$64,047	\$48,824	\$40,922

The specified wage grid would be adjusted appropriately for 2011 as indicated in proposed Section 56.01.

Financial and economic conditions support the City's proposed wage package. Unfavorable economic conditions have caused annual expenditures to exceed annual revenues in the General Fund and Income Tax A Fund. As such, fund balances will continue to decline because of exposure to the auto industry. Other revenues sources have also dwindled, further exposing the City's financial condition. As such, operating revenues will decline further in 2009 and 2010.

Pattern bargaining has been prevalent for a number of negotiation cycles. AFSCME, IAFF, and non-union administrative employees have negotiated comparable wage increases through the years. This pattern should not be nullified; internal parity should be sustained.

External comparables relied upon by the Union are easily discounted. These negotiated outcomes were either completed or were being negotiated prior to the economic downturn in the Fall of 2008. As such, differing economic conditions can lead to different negotiated outcomes. The Conciliator needs to consider present economic realities, and not be swayed by certain prior outliers.

The third year re-opener serves as a justifiable safety valve. If a recovery takes place, and the City's revenue profile improves dramatically, the Union could re-enter negotiations and take advantage of the modified economic climate.

A two-tier wage structure is supported in a number of ways. It represents the City's attempt to engage in long-term cost savings. In anticipation of further economic travails, the proposed approach does not impact current employees and may limit the possibility of future layoffs.

Again, the City relies on the record to sustain an historic pattern-bargaining profile. AFSCME and IAFF have already agreed to a two-tiered pay schedule. The Union should be required to abide by the pattern it has adhered to through the years.

**THE CONCILIATOR'S AWARD – ARTICLES 56.01 AND 56.04 –
SALARY COMPENSATION¹**

The record supports the selection of the City's wage proposals. As such, the following language shall be incorporated into the successor agreement:

Section 56.01

- 2009: \$750 lump sum signing bonus, not included in the base wage.
- 2010: 3% lump sum payment, not included in the base wage.
- 2011: 2% base wage increase or, at the election of the Union, to re-open negotiations for a base wage increase. As long as such notification of the re-opener is made, in writing, to the City prior to October 1, 2010. Such re-opener negotiations, if held, shall be subject to the Dispute Resolution Procedure set forth in ORC 4117.

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The record clearly supports the City's wage proposals. Projections dealing with revenue and related growth have not materialized. Income taxes, which represent the primary source of funding out of the General Fund and Income Tax "A" Fund, have decreased by 7.75% from 2008. The Income Tax "A" Fund balance has continued to decrease since January 1, 2009 to \$8.8 million. The City, moreover, projects a fund deficit of \$3.5 million for the year, leaving a

¹ Additional justifications for the Conciliator's conclusions are contained in the Background Section of this report.

total year-end balance of \$6.0 million. The Conciliator, under these unrebutted circumstances, agrees with the City's conclusion that existing or increased expenditures would not be sustainable.

Revenue growth is stymied by a number of factors. The overall economy will not bounce back for a considerable period of time. This circumstance is especially true when the local economy is so tightly linked with the automotive industry. Manufacturing facilities that have closed as a consequence of the bankruptcies of General Motors and Chrysler will never reopen. Many automotive suppliers have either downsized or gone out of business as a result of these closings.

The City is a service organization. Nearly seventy percent (70%) of expenditures deal with personnel expenses, with eighty-seven percent (87%) of these costs paid from the General fund and Income Tax "A" Fund. With downward projections in these funds, the Conciliator believes that a conservative approach is appropriate at this time. The Union's proposal is currently unsustainable which could lead to future layoffs if left unabated.

This municipality and its' unions have mutually agreed, for a considerable period of time, to engage in pattern bargaining. In the Conciliator's opinion, a practice of this sort trumps any external comparables with contrary indicators. These internal comparables, (IAFF, AFSCME, FOP) are facing similar market conditions, revenue projections, and expenditures. As such, they represent the "best" comparisons for this particular negotiation cycle. Pattern bargaining, when established, leads to internal parity which needs to be sustained. It should be

noted that the pattern, itself, has been established by the parties' own conduct. The negotiation cycle, for whatever reason, caused smaller bargaining units to set the stage at this particular point in time. Bargaining unit size, however, does not necessarily diminish the pattern bargaining practice established over a number of negotiation cycles.

Similar findings support the two-tiered wage structure accepted by the Conciliator. The present and future economic outlook for the City and the Toledo Metropolitan area do not look promising. One way to offset future layoffs, furloughs and unpaid holidays is to implement a two-tiered approach. It does not impact current employees but offers a cushion against future downturns.

Perhaps the economic climate and its impact on the City's revenue sources will brighten by October of 2010. If so, Section 56.01 provides for a unilateral re-opener initiated by the Union. Negotiations could offset the lump sum payments to be experienced in 2009 and 2010.

THE CONCILIATOR'S AWARD – ARTICLES 61 AND 62 – DRUG/ALCOHOL TESTING AND EMPLOYEE ASSISTANCE PROGRAM (EAP)

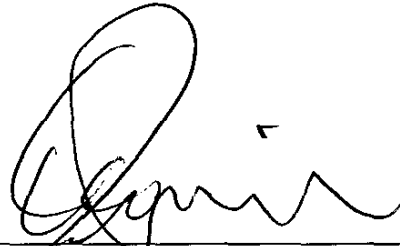
Here, the Conciliator awards the Union's proposal by maintaining current contract language. The City's submission only partially referenced these issues. The record of the hearing, however, is virtually silent in terms of any evidence and testimony. The Union's presentation was far more extensive and complete.

Within this context, it would be improper for the Conciliator to approve the City's proposal. The Conciliator cannot rely on arguments contained in the Fact-

Finder's report as proof of the matters asserted. It is a collateral proceeding that needs to be referred to as a form of evidence; but it has non-binding implications when the record reviewed by the Fact-Finder differs from the one reviewed by the Conciliator.

8/19/09

Chagrin Falls, Ohio
August 19, 2009



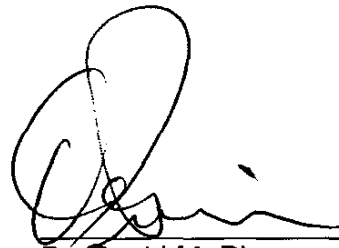
Dr. David M. Pincus
Conciliator

CERTIFICATE OF SERVICE

This is to certify that the foregoing Conciliator Opinion and Award was sent to the State Employment Relations Board by regular U.S. mail and was served upon the parties listed below by overnight mail this 19th day of August, 2009.

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Dr. David M. Pincus
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