

HAND DELIVERED

STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF CONCILIATION	:	SERB Case Numbers: 08-MED-09-
	:	0943, 0944, and 1056
BETWEEN THE	:	
	:	
CITY OF TIFFIN, OHIO,	:	
	:	
EMPLOYER	:	Date of Conciliation Hearing:
	:	August 10, 2009
AND THE	:	
	:	
OHIO PATROLMEN'S BENEVOLENT	:	
ASSOCIATION,	:	
	:	
UNION	:	Howard D. Silver
	:	Conciliator

STATE EMPLOYMENT
RELATIONS BOARD
2009 AUG 21 A 9:18

OPINION AND ORDER OF THE CONCILIATOR

APPEARANCES

For: City of Tiffin, Ohio, Employer

Thomas D. Rooney, Esquire
MILLISOR & NOBIL Co., L.P.A.
9150 South Hills Boulevard, Suite 300
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For: Ohio Patrolmen's Benevolent Association, Union

Justin D. Burnard, Esquire
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Toledo, Ohio 43617

This matter came on for conciliation hearing at 10:00 a.m. on August 10, 2009 at the city of Tiffin, Ohio's City Hall at 51 East Market Street, Tiffin, Ohio 44883. The hearing record was closed at 10:45 a.m. on August 10, 2009. The Employer, on August 13, 2009, filed a motion to reopen the hearing record; a response opposing the motion was filed by the Union on August 13, 2009; a reply was filed by the Employer on August 17, 2009; a surreply was filed by the Union on August 19, 2009. The Employer's motion is hereby denied.

This matter proceeds under the authority of Ohio Revised Code section 4117.14(G) and in accordance with Ohio Administrative Code section 4117-9-06.

FINDINGS OF FACT

1. The parties to this conciliation proceeding, the city of Tiffin, Ohio, hereinafter the Employer, and the Ohio Patrolmen's Benevolent Association, hereinafter the Union, were parties to three collective bargaining agreements, each in effect from January 1, 2007 through December 31, 2008, covering three bargaining units: a bargaining unit comprised of full-time Tiffin police communication technicians, a bargaining unit of six dispatchers, SERB case number 08-MED-09-0943; a bargaining unit comprised of full-time Tiffin police officers, a bargaining unit with a census of twenty, SERB case number 09-MED-09-1056; and a bargaining unit comprised of full-time lieutenants and sergeants, eight in number, SERB case number 08-MED-09-0944.

2. The Union and the Employer in bargaining a successor collective bargaining agreement for each of the three Tiffin police department bargaining units have reached agreement on all issues with one exception, language proposed by the Union to be added to Article 24, Longevity Pay, within the successor Agreement for Tiffin police communication technicians, SERB case number 08-MED-09-0943.
3. The new language proposed for inclusion within Article 24 of the communication technicians successor Agreement would provide a top rate of longevity pay, after twenty-five years of service, of twelve percent (12%) of base pay.
4. The current language of Article 24 within all three of the Tiffin Police Department's January 1, 2007 through December 31, 2008 collective bargaining agreements provides a longevity pay rate that tops out at twenty years of service at ten percent (10%) of base pay.
5. The patrol officers bargaining unit, the lieutenants and sergeants bargaining unit, a Tiffin firefighters bargaining unit, and a maintenance and service bargaining unit represented by the American Federation of State, County and Municipal Employees (AFSCME) have all agreed to successor Agreements that provide a top rate of longevity pay at twenty years of service at ten percent (10%) of base pay.
6. The firefighters bargaining unit and the AFSCME bargaining unit have "me too" provisions that would require the payment of increased longevity pay to the firefighters bargaining unit and the AFSCME bargaining unit in the event such an increase in longevity pay were to be granted to a different bargaining unit by agreement of the Employer.

7. The parties participated in fact-finding and the fact finder issued his report on April 20, 2009, wherein, among a broad range of issues and recommended language, the fact finder recommended the increase in longevity pay proposed by the Union to be included in Article 24 of the communication technicians bargaining unit's successor Agreement.
8. The Union accepted the fact finder's report; the Employer rejected the fact finder's report.
9. Tiffin police communications technicians participate in the Public Employees Retirement System (PERS) that provides for the payment of retirement benefits after thirty years of service.

POSITIONS OF THE PARTIES

Position of the Ohio Patrolmen's Benevolent Association, Union

The Union proposes adding a step to the longevity pay schedule in Article 24 in the parties' successor Agreement, to provide an incentive to long-term bargaining unit members to remain employed by the city of Tiffin.

The Union notes that dispatchers participate in the Public Employees Retirement System (PERS) that requires thirty years of service to attain eligibility for retirement benefits. The Tiffin Police Department dispatchers now receive no increase in longevity pay beyond the ten percent longevity payment paid at twenty years of service, while a dispatcher must work a minimum of thirty years under PERS before retiring with retirement benefits. The Union points out that the additional longevity pay step breaks up the

final ten years of service and provides an employee with a final small increase for the many years of service provided.

The Union argues that an increase to longevity pay will serve as an incentive in retaining experienced employees and in attracting prospective employees. The Union points out that longevity pay is an important benefit to employees who choose to spend their careers employed by the city of Tiffin, Ohio.

The Union presented as a witness Candida Cunningham, a communication technician within the bargaining unit with twenty-one years of service. Ms. Cunningham noted that for bargaining unit members to retire requires thirty years of service under PERS, and the last increase to longevity pay occurs at twenty years of service. Ms. Cunningham noted that the ten years between twenty years of service and thirty years of service provide for no advancement or promotion in pay, and therefore no increase in pay during these ten years.

Ms. Cunningham pointed out that experience on the job is a valuable asset and noted that the longevity increase proposed at twenty-five years of service, from ten percent to twelve percent of base pay, requires only a small additional outlay of funds by the Employer.

Ms. Cunningham noted that the work done by the members of her bargaining unit is conducted twenty-four hours per day, seven days per week. Ms. Cunningham acknowledged that city firefighters accepted a zero wage increase but noted that that is why longevity payments have become so valuable to employees. Ms. Cunningham noted

that police officers may retire after twenty-five years of service and are not required to provide thirty years of service as demanded by PERS of the dispatchers.

Under questioning by the Employer's representative, Ms. Cunningham acknowledged that the AFSCME bargaining unit had agreed to freeze its wages and that the Employer had agreed to absorb a six percent increase in the cost of providing health care coverage to city employees in 2009.

Ms. Cunningham confirmed that the economic position of the Employer has worsened in recent times, with layoffs in the police department, among firefighters, and in the AFSCME bargaining unit. Ms. Cunningham also acknowledged that non-organized city employees experienced a five-hour per week decrease, and salaried non-organized city employees received a seven percent wage decrease.

Ms. Cunningham acknowledged that all other bargaining units employed by the city have the same longevity payment schedule as that which appears within the communication technicians' most recent collective bargaining agreement. Ms. Cunningham agreed that no other bargaining unit has secured an increase in longevity pay.

Ms. Cunningham was aware that an open dispatcher position had not been filled in recent times and an open police officer position had not been filled. Ms. Cunningham was also aware of memoranda of understanding between the police officers and the Employer, and the firefighters and the Employer that will result in a decrease in pay and two less holidays, agreements reached in May, 2009. Ms.

Cunningham was aware that city income tax collections had failed to meet anticipated levels.

Under redirect examination by the Union's representative, Ms. Cunningham stated that the dispatchers' bargaining unit had not been asked to take a pay cut. Ms. Cunningham pointed out that her bargaining unit had voted to accept the fact finder's report.

Position of the City of Tiffin, Ohio, Employer

The Employer's final position on the language of Article 24 to be included in the parties' successor Agreement does not include an increase in longevity pay. The Employer argues that to order such an increase would be costly and fiscally unsound.

The Employer points out that it has encountered no difficulty in hiring and retaining experienced staff, and noted that the current language of Article 24 as to longevity pay is identical to all non-organized city employees; firefighters employed by the city of Tiffin; police officers, lieutenants, and sergeants employed within the Tiffin Police Department; and the maintenance and service collective bargaining unit represented by AFSCME. The Employer notes that the bargaining unit comprised of Tiffin Police Department communication technicians has six people within it, and of these bargaining unit members one would qualify for the increased longevity pay as of May 19, 2009; a second bargaining unit member would qualify for the increase in 2014; and a third bargaining unit member would qualify for the increase in longevity pay in 2017.

The Employer points out that the firefighters bargaining unit and the AFSCME bargaining unit have "me too" language in their respective collective bargaining agreements which grant to each of these bargaining units any increase in longevity pay secured by the communication technicians bargaining unit that was agreed by the Employer.

The Employer refers to the difficult economic circumstances faced by the city of Tiffin in recent times and the need for the City to be fiscally responsible. The Employer argues that the increase in longevity pay is not warranted and should not be included in the parties' successor Agreement for communication technicians.

DISCUSSION

State Employment Relations Board (SERB) case numbers associated with this proceeding are three in number, reflecting three separate collective bargaining units employed by the city of Tiffin, Ohio. Each of these bargaining units had its collective bargaining agreement with the Employer expire on December 31, 2008. The parties bargained about successor collective bargaining agreements for the patrolmen's unit, the lieutenants and sergeants unit, and the communication technicians unit.

The Employer and the Union reached tentative agreement on a successor Agreement for the patrolmen's unit and the lieutenants

and sergeants unit. Neither of these successor Agreements contains a change to Article 24, Longevity.

The Employer and the Union were unable to reach complete agreement on a successor Agreement for the communication technicians bargaining unit and negotiations on this bargaining unit proceeded to fact-finding. The fact finder, among a variety of issues, recommended the Union's position on adding language to Article 24, Longevity, in the parties' successor Agreement to increase from ten percent to twelve percent the premium paid for length of service, beginning with twenty-five years of service. The Union accepted the fact finder's report; the Employer rejected the fact finder's report.

A single issue remains separating the parties from their communication technicians successor Agreement, the additional language proposed by the Union to Article 24, Longevity, that would increase from ten percent to twelve percent the premium paid for longevity at twenty-five years of service.

In support of its final position on the language of Article 24 to be included in the parties' successor collective bargaining agreement, the Union points to the fact that the members of the communication technicians' bargaining unit participate in the Ohio Public Employees Retirement System (PERS) and this retirement system requires thirty years of service to become eligible for retirement benefits. The Union points out that current language within Article 24 of the parties' latest collective bargaining agreement provides for a ten percent premium for longevity at

twenty years of service but provides no increase to this premium between twenty years of service and the thirty years of service required by PERS to become retirement eligible.

The Union sees the twelve percent premium paid at twenty-five years of service to provide a break in the final ten years of service between twenty years and thirty years, offering a final, small increase for an employee who has provided twenty-five years of service. The Union sees this increase as an incentive that will promote the retention of long-term employees.

The fact finder, at pages 14 and 15 of his April 16, 2009 fact-finding report, found that the communication technicians' bargaining unit cannot and should not be controlled by terms and conditions of employment expressed in collective bargaining agreements among other units. The fact finder rightfully pointed out that the communication technicians' bargaining unit played no part in the bargaining of those other Agreements, and emphasized that each labor agreement must be effected on its own terms and its own facts. The fact finder noted that if the Employer agreed to language requiring it to make concessions to other bargaining units, such language cannot be used as a lever through which to control the outcome of bargaining with the communication technicians' bargaining unit.

Because this is a conciliation proceeding, the "me too" language found in other collective bargaining agreements among bargaining units employed by the city of Tiffin would not be engaged because a conciliation process does not involve the

agreement of the Employer. The conciliator presumes that the "me too" language contained in other collective bargaining agreements among bargaining units of the city of Tiffin calls for receiving the same benefits agreed by the Employer for another bargaining unit. A conciliation order does not involve an agreement by the Employer and therefore the conciliator's order in this case would not trigger the symmetry otherwise called for by the "me too" clauses in the other Agreements.

The conciliator is nonetheless aware that when a general balance or equilibrium among and between a municipality's bargaining units is altered by the addition of a benefit to one bargaining unit, pressure builds in the other bargaining units to gain the additional benefit. The conciliator understands that his order in this case will not automatically award the same benefit to other collective bargaining units, but the conciliator is also aware that to grant such an additional benefit through conciliation serves to remind the other bargaining units of what they lack.

As to the differences between the longevity pay schedule found in Article 24 as most recently agreed by the parties compared to the thirty years of service required for retirement benefits by PERS, and the twenty-five years of service required of police and firefighters for retirement benefits, the fact finder found the following:

Here, the differing service requirements for retirement eligibility for personnel under the Public Employees Retirement System, and those Officers covered by Ohio Police and Fire Pension Fund creates just such a factual distinction, and the OPBA's rationale for its proposal is

persuasive, notwithstanding the City's argument that it has had no difficulty attracting and retaining Communications Technicians under the current longevity schedule.

The conciliator fails to find a connection between longevity pay under the communication technicians' collective bargaining Agreement and the length of service required by PERS to become eligible for retirement benefits. Longevity is paid as an incentive to experienced employees to remain employed and in recognition of the value of experience and skills gained over years of employment. To date, the parties have agreed to longevity premium payments that begin at four years of service at two percent, increase to four percent at eight years of service, increase at twelve years of service to six percent, at sixteen years increase to eight percent, and at twenty years increase to ten percent. These percentages are applied to regular base pay and are paid in addition to the pay received for hours worked. The ten percent premium at twenty years of service does not stop at twenty years of service but continues to be paid in each of the years of continuing service extending beyond twenty years of service.

The Employer has pointed out, both at fact-finding and at the conciliation hearing, that the Employer has had no difficulty in attracting and retaining communication technicians under the current longevity pay schedule.

The thirty years required to retire under the PERS retirement system is based on the financial circumstances and requirements of the PERS system and has no connection to the longevity pay schedule in the parties' collective bargaining agreement. While PERS

requires a minimum of thirty years of service to become eligible for retirement benefits, some employees will work beyond thirty years of service while some will provide twenty to twenty-five years of service. One schedule has no connection or effect on the other. The fact that uniformed police and firefighters attain retirement eligibility at twenty-five years of service under a retirement system separate and distinct from PERS does not reflect a disadvantage to the communication technicians.

The Union sees the twenty-year to thirty-year time period bisected by the proposed twenty percent increase in longevity pay (from ten percent to twelve percent) at twenty-five years of service to be a natural interval at which to provide an increase. This interval, however, is out of step with the four-year increments otherwise found in the longevity pay schedule.

The conciliator has read closely the fact finder's report and is in agreement with the vast majority of it, but parts company with the fact finder in his view that there is anything persuasive about the factual distinction between the longevity pay schedule as previously agreed by the parties and the requirements for retirement under the PERS system, and the retirement eligibility requirements for other bargaining units (police officers and fire fighters). After rightfully emphasizing the sovereignty of the communication technicians' bargaining unit in bargaining their own successor Agreement notwithstanding the circumstances of other bargaining units, the fact finder recommends the increase in longevity pay proposed by the Union through reference to retirement

rules among bargaining units external to the communication technicians' bargaining unit, among positions that are substantially different, in terms of duties and risks of harm, from the communication technician positions that make up the bargaining unit, and operate under a different retirement system. The conciliator fails to find a basis under the PERS system or any other retirement system for an increase to the longevity pay schedule that has been the agreed schedule to this point in time for all city employees.

The Union contends that the increased costs it has proposed will be minimal, an increase in benefits that is affordable by the Employer.

The conciliator finds it unnecessary to comment at length on the recent financial circumstances of the city of Tiffin, Ohio. We are all in the midst of a serious recession, a period of declining revenues and increasing costs, especially health care costs. The Employer's financial plight is known to both parties. Ms. Cunningham, the witness called by the Union at the conciliation hearing, was aware of the contributions made by other bargaining units employed by the city and by non-organized city employees, all of whom have experienced reductions in pay and benefits as a result of the financial condition of the city. The Employer continues to pay ninety percent of the cost of providing health insurance coverage to city employees, organized and non-organized, and is absorbing a six percent increase for this coverage in 2009.

The communication technicians' bargaining unit has not been asked to suffer a wage decrease, although no wage increase has been agreed for this bargaining unit.

The conciliator finds an Employer in dire straits as to meeting the obligations of the city and a proposed increase in longevity payment that would, at present, enrich one person. A second person in the communication technicians' bargaining unit would benefit from the additional language four years from now.

The conciliator understands the benefit that would be enjoyed by the single communication technician under the additional language proposed for Article 24, but otherwise sees little benefit flowing from this increase to anyone else in the near future, including the Employer. The Employer is facing rigorous financial hardships and the Union's participation in the struggle to overcome these difficult economic times is inescapable and necessary. The communication technicians' bargaining unit has been supportive in the efforts of the Employer to meet these challenges through the lack of a wage increase. The conciliator finds the lack of an increase to the longevity pay schedule to be a legitimate and valued contribution to the struggle shared by the Employer and the Union to protect city services and protect the bargaining unit.

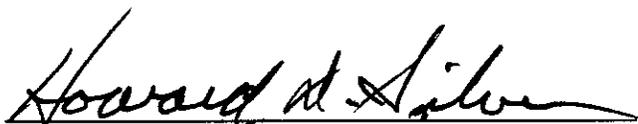
The conciliator finds an insufficient basis to increase the longevity pay provided for in Article 24 and therefore selects the Employer's position on this issue and orders that the language of Article 24 found in the parties' most recent collective bargaining

agreement be included in the parties' successor collective bargaining agreement, unchanged.

In making the Order presented herein, the conciliator has considered the criteria expressed in Ohio Revised Code section 4117.14 (G) (7) (a) - (F).

ORDER

The final settlement offer of the Employer as to longevity pay is selected by the conciliator. Current language in Article 24 shall be included in the communication technicians' successor Agreement, unchanged. All other language tentatively agreed by the parties for inclusion in their successor collective bargaining agreements are ordered included in the successor Agreements.


Howard D. Silver
Conciliator

Columbus, Ohio
August 21, 2009

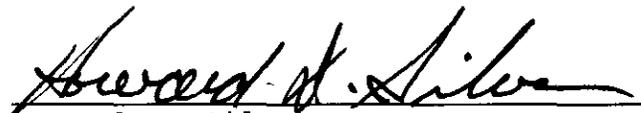
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Final Offer Settlement Opinion and Order of the Conciliator in the Matter of the Conciliation Between the City of Tiffin, Ohio and the Ohio Patrolmen's Benevolent Association was filed with the State Employment Relations Board, via hand-delivery, and mailed this 21st day of August, 2009 to:

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Suite 300
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and

Justin D. Burnard, Esquire
Amy L. Zawacki, Esquire
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2222 Centennial Road
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Conciliator

Columbus, Ohio
August 21, 2009