

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**CITY OF NELSONVILLE
EMPLOYER**

and

**OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
EMPLOYEE ORGANIZATION**

CASE NOS. *08-MED-09-0964* ✓

0965

CONCILIATOR'S AWARD *0966*

STATE EMPLOYMENT
RELATIONS BOARD
2009 JUL 31 A 11:05

CONCILIATOR:

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FOR THE UNION:

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FOR THE CITY:

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CONCILIATION AWARD

STATEMENT OF CASE: The parties, the City of Nelsonville, represented by Garry E. Hunter, Esq., and the bargaining units, including all full-time Police Sergeants, Senior Patrolman, and Full and Part-time Patrolman Officers of the City (approximately 13 total), represented by Mark J. Volcheck, Attorney for the Ohio Patrolmen's Benevolent Association (OPBA), have entered into negotiations for a contract between the parties to take effect January 1, 2009, and to expire December 31, 2011.

The parties have engaged in previous contract negotiations that have included fact finding and conciliation under Chapter 4117. The parties attached a copy of the expired collective bargaining agreement.

The parties met and bargained in good faith, and were able to agree on all but six issues of the contract. The parties submitted the issues to fact-finding on February 5, 2009, which led to a fact-finding and recommendation which was rejected by the City. I was chosen to serve as conciliator and issue a binding conciliation award pursuant to R.C. 4117.14(G). At the conciliation hearing on May 5, 2009, the parties outlined their position on the remaining issues. Article 19-Corrective Actions, Section 1 is agreed. Both parties adopted current contract language as their last best offer. The parties also agree to the contract term: January 1, 2009 through December 31, 2011. The remaining issues are Article 17-Longevity, Article 18-Insurance, Sections 1 & 11, Article 21-Miscellaneous, Sections 2 & 12, and Article 23-Wages, Sections 1 & 2.

Pursuant to R.C. § 4117.14 and Admin.R. 4117-9-05, Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, was chosen as conciliator.

THE OPBA POSITION:

The bargaining units' last best offer is current contract language, which was the recommendation of the Fact Finder, who adopted the position of the bargaining units at fact finding. The bargaining units specifically adopted the analysis and recommendation and submitted basically the same documentation it submitted to the fact finder. Their argument is that the City has shown no willingness to reimburse the bargaining units for a concession. The bargaining units are among the lowest paid in the area. The City has been unable to negotiate such a concession with either the fire or the service workers in the contracts it entered into for the contract period 2009-2011.

AWARD

The City's last best offer seeks to apply its proposed change in the future. No new employee in the bargaining units shall qualify for longevity pay. According to the City's counsel, all but the fire contract in Athens contains the phase out. The bargaining units point to the longevity provisions in all of the other police contracts in the geographic area, and claim current language supported by the fact finder's decision. This is not exactly what the fact finder decided. Before the fact finder the City had proposed a complete abolishment of longevity.

I independently consider the statutory criteria in making this award. Longevity has been a part of the agreements between the parties under previous collective bargaining. On balance, more comparable police contracts contain longevity articles. The City is able to finance and administer the issue. I am uncomfortable supporting by fiat a different, lower paid set of employees who perform the same duties. Recently the Central Ohio Transit Authority, which had successfully implemented a lower pay scale for new employees, found that it was not able to fill its vacancies in

operator positions. The issue of longevity seems especially suited to continued negotiation and give and take.

I award the last best offer of the bargaining units, and adopt by reference their proposed language for Article 17 - Longevity.

ARTICLE 18 – INSURANCE, SECTIONS 1, and 11.

The two issues for determination concern the threshold amount requiring the bargaining unit members to contribute toward the health insurance cost, and whether the City should obtain some discretion in whether the City is required to continue to negotiate with the bargaining unit over “minor” coverage changes.

THE CITY’S POSITION:

The City’s last best offer on Health Insurance, Article 18, Section 1, is that the bargaining unit members continue to pay 20% of the cost for health insurance that exceeds \$700. The City also proposes to add language in Section 11 that provides that coverage “shall remain the same ...with minor benefit changes resulting from changes in medical practice, technology, laws and/or industry standards.” This language was suggested by the City’s health insurance carrier for inclusion in collective bargaining agreements. The City asserts that the increased discretion implicit in its proposed language is necessary to provide the additional controls for the City to insure financial responsibility.

THE OPBA POSITION:

The bargaining units’ last best offer is an increase in the threshold amount to \$750.00 for the life of the contract (The amount would go into effect 1/1/2010 because of restrictions placed on conciliation awards having cost implications). The bargaining units oppose the additional language

proposed by the City. The bargaining units point out that the fire and service workers' bargaining units got the \$750.00 threshold and neither agreed to the added language. The fact finder recommended the OPBA's position on both health insurance issues; the bargaining units submit that I should adopt the fact finder's analysis and recommendation.

AWARD

The fact finder determined that the \$750 threshold was reasonable, and justified recommending it because the City agreed to it with the other two bargaining units and it made sense to have all unionized employees contributing the same amount for insurance coverage. Similarly, the fact finder rejected the "flexibility" language proposed by the City. His justification was that the other bargaining units did not agree to it, there were no comparables using the language, no specific problems were identified, and the City's proposal did not develop its plan sufficiently. This language seemed appropriate to him for further negotiation rather than imposing it through the fact finding process.

I have independently examined all of the information provided to me concerning these issues. With respect to Section 1, the fact finder's award is not arbitrary, erroneous or unreasonable, so I see no need to substitute my judgment for his. With respect to the additional language in Section 11, I respect the fact finder's recommendation. It would be improper to remove a bargained for provision where, as here, we are dealing with negotiation over what are clearly "terms and conditions of employment."

I award the last best offer of the bargaining units, and adopt by reference their proposed language for Article 18, Insurance, Sections 1 and 11.

ARTICLE 21, MISCELLANEOUS, SECTIONS 2 & 12.

The parties are in agreement with the change in Section 2, which removes the word “locked” from the description of the provided bulletin boards. The City’s last best offer proposes current language for Section 12, and the bargaining units’ last best offer recommends the substitution of the following for Section 12:

All newly hired employees shall serve an initial probationary period of one (1) year. Changes in position between part-time Patrolman, full-time Patrolman and senior Patrolman shall not require that an additional probationary period be served. All new Sergeants shall serve an initial one (1) year probationary period. Should a Sergeant not make his probationary period, he/she shall be returned to his/her former position.

THE CITY’S POSITION:

The City’s last best offer is current language in Section 12. The City objects to the proposed language concerning probationary periods. Currently the bargaining units serve probationary periods when they change classification, and the bargaining units’ proposal would do away with probationary periods after the original probationary period, except for a promotion to Sergeant. The City does not see this as being in its best interest. The current practice is that if a bargaining unit member does not successfully complete probation he or she returns to his or her previous position.

THE OPBA POSITION:

The bargaining units argue that their changed language in Section 12 clarifies and simplifies probationary periods. They suggest that a part-time hire might be required to serve a six month probationary period and then another one year probationary period if he or she is hired full time. The bargaining units argue that their proposal is closest to that recommended by the fact finder.

AWARD

A probationary period is an important management control that should not be changed by decree unless there are demonstrated specific problems with the application of the current language of an agreement. The fact finder determined that the City did not require a probationary period when bargaining unit members moved from patrolman to senior patrolman, and that anyone who did not successfully complete a probationary period was returned to his previous position. I do not perceive a problem in need of correction.

I award the last best offer of the City, and adopt by reference its proposed language for Article 21, Miscellaneous, Sections 2 and 12.

ARTICLE 23 – WAGES.

The parties are in agreement that R.C. § 4117.14(G)(11) applies, and that no provision concerning increased compensation or having other cost implications can go into effect until January 1, 2010. The parties differ in the amount of increase that they consider reasonable and acceptable.

THE CITY'S POSITION:

The City's last best offer is no wage increase or signing bonus for 2009, an 8.5% across the board increase for 2010, and a 4% across the board increase for 2011. The City points out that the Service Workers and Fire Department bargaining units agreed to approximately 3.5% across the board increases for 2009, 2010 and 2011, and that the offer to these bargaining units amounts to a higher percentage over the three year period than Service and Fire received. The City points to the decrease in General Fund Revenues that it expects for 2009 compared to 2008, which, when coupled with increased costs for health insurance, pension payments, wage increases, overtime, and

other costs, will lead to a revenue shortfall of significant proportions. The City Auditor estimates a shortfall for 2009 alone of \$231,000. There is significant doubt that the State will fully fund local government funds to the cities. Large capital investments in the near future will not allow the City to continue to increase funds in the general fund as it has in the last few years, leading to the large general fund carryover balance the City now enjoys. The City insists that it cannot agree to increases in wages that will require it to spend significant amounts of its unencumbered general fund carryover balance.

THE OPBA POSITION:

The bargaining units' last best offer proposes a wage freeze for 2009; effective January 1, 2010, an across-the-board wage increase derived by increasing the 2008/2009 wage by two successive 5% increases and a \$500 signing bonus payable the first pay in January 2010; and effective January 1, 2011, an across-the-board wage increase of 5.5%. The bargaining units argue that their last best offer comes the closest to what the fact finder recommended within the constraints of R.C. § 4711.14(G)(11). The bargaining units argue that they receive pay that is lower than comparable jurisdictions and that even with implementation of their last best offer, at the end of the contract period they will be closer to, but would not have closed the gap. According to their presentation, the increases in pay lost for 2009 and the additional year at the lower threshold for health insurance co-pay more than outweighs the amount they will obtain with the percentage increases they demand in 2010 and 2011. They claim their comparatively poor wages support the total increase for three years of 15.5%, plus the signing bonus, which was the amount recommended by the fact finder and rejected by the City.

AWARD

The parties are in agreement that the approximate difference in their positions on wages over the term of the contract amounts to about \$20,000. The City has not argued that it is unable to pay. Rather, the argument is that prudent fiscal management requires lower increases than the bargaining units demand. The City cannot make its budget balance by using funds carried over from previous years, or the balance will quickly be reduced and used up. According to information provided by the City Auditor, the current unencumbered general fund carry-over balance is now about 1.5 million dollars, almost 100% of the annual City general fund expenditures.

I independently consider the statutory criteria in making this award. In the expired agreement the City and bargaining units agreed to .50/hr. raises across-the-board, in each of the three years of the contract, which amounted to about 3.5% raises in each year, with a lump sum payment upon signing of \$500. Comparison with other nearby jurisdictions, even discounting Athens, does support the determination that the bargaining unit members are paid wages below the amounts paid there for similar work.

In addition to my independent review of the documents presented by the parties, I have also examined the discussion and decision of the fact finder. The fact finder took a reasoned approach to the issues, examined the evidence presented to him, and recommended an increase in the across-the-board increases of 5% in each of the first two years of the agreement and 5.5% in the last year of the contract. He also recommended the \$500 payment upon signing. I find no obvious mistakes or reliance on factual errors. Without such a showing, the fact finder's recommendation is entitled to a presumption of regularity by me. Because of the limitations placed upon me by statute, the bargaining units sought to propose wage increases they claim are in accordance with the fact

finder's recommendation. The total increase over three years is the same percent total, but the forced deferment of an increase in 2009 results in less net to the bargaining unit members.

I award the last best offer of the bargaining units, and adopt by reference their proposed language for Article 23 - Wages.

CONCLUSION

The parties provided substantial information in a courteous and professional manner for my consideration. In addition to the awards above, I hereby include all unopened articles and all tentatively agreed articles in the successor agreement. The effective beginning date of the agreement is January 1, 2009. The parties shall take the actions necessary to implement the agreement.

Respectfully submitted,

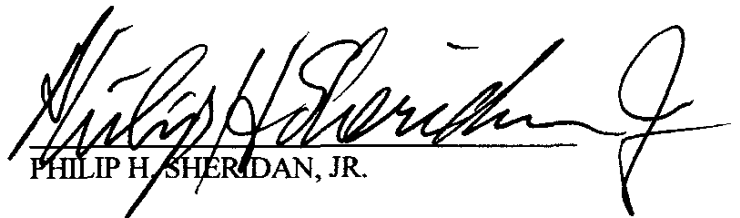


PHILIP H. SHERIDAN, JR.

July 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of this Conciliation Award to the parties' representatives at the addresses listed on the cover page to this award, and to the State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, Ohio 43215, by ordinary U.S. mail, postage prepaid, this 28th day of July, 2009.



PHILIP H. SHERIDAN, JR.