

CONCILIATION REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
October 10, 2009

In the Matter of:)	
)	
The City of Fairview Park)	
)	
and)	08-MED-10-1187/1188
)	Police Patrolmen
Ohio Patrolmen's Benevolent)	Ranking Officers
Association)	
)	

APPEARANCES

For the OPBA:

S. Randall Weltman, Attorney for OPBA
 Max Rieker, Attorney for the OPBA
 John Martin, Sergeant and Lieutenant's Unit OPBA Representative
 Erich Upperman, Sergeant and Lieutenant's Unit OPBA Representative
 Mike Anderson, Patrolmen's Unit OPBA Representative
 Mark Gleba, Patrolmen's Unit OPBA Representative
 Bruce Minalak, Patrolmen's Unit OPBA Representative

For the City of Fairview Park:

William McGinty, Attorney for the City
 Eileen Patton, Mayor

Conciliator: Dennis M. Byrne

Background:

The parties to this Conciliation are the members of the Fairview Park Police Department represented by the Ohio Patrolmen's Benevolent Association (OPBA) and the City of Fairview Park. Prior to the conciliation, the parties held numerous negotiating sessions and participated in a fact-finding hearing over a wide range of issues. The Union accepted the Fact Finder's report, but the City rejected the report because it claimed that some of the Fact Finder's recommendations were unreasonable and not supported by the facts in the record. The City especially objected to the recommendation that a new benefit, a firearms qualification payment, be added to the agreement. However, it must be noted that the report was the basis for tentative agreements on a number of other issues.

Regardless, the parties could not finalize their agreement, and according to the parties' Pre-Hearing statements six (6) issues remain unresolved. The outstanding issues are: 1) Wages, 2) Firearms Qualification Bonus, 3) Uniform and Equipment Allowance, 4) Executive Officer Pay, 5) a Miscellaneous Staffing Issue, and 6) Duration.

The parties asked the Conciliator to attempt to mediate the dispute, and there were wide ranging and frank discussions about the issues. During those discussions, the parties were able to close their differences on three issues: 1) Uniform and Equipment Allowance, 2) Executive Officer Pay, and 3) Duration; and both parties agreed to accept the Fact Finder's recommendations. However,

a final agreement was not achieved even though the parties were able to narrow their differences. Therefore, three issues remained open. The major stumbling blocks to signing a new agreement are 1) the firearms qualification bonus payment and 2) the wage increase recommended by the Fact Finder.

The Conciliation Hearing was held on September 24, 2009, in the Fairview Park Community Center, 21225 Lorain Road. The hearing was convened at approximately 10:00 AM and adjourned at 3:00 PM.

The Ohio Public Employee Bargaining Statute sets forth the criteria a conciliator is to consider in making recommendations. The criteria, which are set forth in Rule 4117.14(G)(7), are:

- (1) Past collectively bargained agreements, if any, between the parties.
- (2) 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.
- (3) 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 standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, 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 private employment.

Introduction:

The Union accepted the Fact Finder's recommendations on the issues in dispute, and its positions mirror the Fact Finder's report. The City rejected the Fact Finder's report arguing that the recommendations did not adequately reflect the economic reality facing Fairview Park. That is, the City believes that the Fact Finder did not give enough weight to its arguments that the City had to control its costs if it wanted to avoid laying-off current employees and maintain a sound fiscal posture. In addition, the City argued that internal comparability requires that the members of the Police Department accept wage/benefit increases similar to the increases negotiated by all other City employees. According to the City's representative, the Fact Finder's recommendations lead to a situation where the Ohio Patrolmen's Benevolent Association membership is receiving a richer settlement than other city employees.

On the other hand, the Union argued that the Fact Finder understood the issues and made recommendations that were equitable given the fiscal situation in Fairview Park and the facts in the record. The Union argues that the Conciliator should accept the Fact Finder's recommendations because there was nothing in the record that proved the Fact Finder did not understand and/or fairly evaluate the parties' positions before he issued his report.

The Union's position is based on the fact that over time conciliation has come to be looked at as an appellate procedure. That is, many (most) neutrals have come to believe that they should give deference to a fact finding report unless one of the parties can show 1) that the Fact Finder did not make his/her

recommendations based on the facts in the record, or 2) new evidence has come to light that the Fact Finder did not consider. Therefore, under the assumption that in most cases conciliation is an appellate procedure, a conciliator is required to give great weight to a fact-finding report even if the conciliator might have made different recommendations if he/she were the original finder of fact.

Issue: Article 26 Rates of Pay

Union Position: The Union demand is for a two (2%) increase in the existing wage effective January 1, 2009, followed by a one and three-quarter (1 $\frac{3}{4}$ %) percent increase paid on January 1, 2010.

City Position: The City is offering a two (2%) percent increase paid from January 1, 2009, and one (1%) percent paid January 1, 2010.

Discussion: The differences in the parties' positions, while seemingly small, represent a substantial difference in their views about the situation in Fairview Park. The City argues that other bargaining units have accepted its wage offer, and its position is based on internal comparability considerations. The Union contends that the Fact Finder understood the issue and believed that the facts proved the City could afford to pay and should pay more than one (1%) percent in 2010.

The Conciliator is aware of the settlements that the City has reached with its other units; however, the City did not prove that the OPBA unit did not deserve the amount awarded by the Fact Finder. Moreover, no bargaining unit can be held hostage to the settlements reached in other negotiations. Internal

comparisons are only one element, albeit an important one, in negotiations between an employer and its employees. However there are differences in the conditions facing different bargaining units, and this implies that different units might bargain different contract clauses.

In addition, the Union did make a small concession in the second year, from a two (2%) percent wage increase to a one and three quarter (1 ¾%) percent demand. The Conciliator finds that the Union's position is reasonable in this instance. There is nothing contained in either the Fact Finder's report or in the discussions between the parties that shows that the City's position should be accepted. That is, given all of the information presented by the parties, the Conciliator finds that the City did not prove that the police officers should not receive the amount that they demanded and the Fact Finder awarded.¹

Note: There was another issue involved with Article 26, a two-tiered wage scale that will pay new hires less than current employees for four years.

Issue: Article 26: (New)

Union Position: The Union offered a two-tier wage scale whereby new hires would be paid twenty (20%) percent less than the current starting wage rate and be brought up to the existing rate after three (3) years.

City Position: The City accepted the twenty (20%) percent lower starting rate, but demanded that the new hires be brought up to the existing rate after four (4) years.

¹ The new wage schedule is attached as Appendix A to this report.

Discussion: This issue is related to the language in the Fact Finder's report.

The Fact Finder recommended that new hires be brought up to the existing wage "in equal increments over a four year period." The Union argues that this language means that any new hire will be brought up to the existing wage rate at the end of his third year of service, i.e., the start of the fourth year of employment. The City argues that the language means that the new hire will be brought up to the existing wage rate at the end of the fourth year of employment, i.e., the start of the fifth year of employment.

In this instance the Conciliator agrees with the City's position. While it is possible to read the contested language according to the Union's interpretation, "over four (4) years" would normally mean that at the end of four (4) years the wages would be equal. If the Fact Finder intended to equalize wages at the start of the fourth year of employment, he could have specified that the wages would be equalized at the end of the third year of employment or used language such as "at the end of the third year or at the start of the fourth year." Given the facts of the matter, the Conciliator believes that the language used by the Fact Finder shows that he intended that the new hires would have their wages equalized over a four (4) year period.

One other fact needs to be elucidated when the wage package is discussed. Historically, there was some difference in the rates of pay for equivalent job titles between the police department and the fire department. In an attempt to bring rough parity between the two units, the City proposed a wage scale that had some wage adjustments built into the scale during the negotiations

over wages. The Conciliator is proposing that the City's wage scale be used as the basis for his wage recommendation(s).²

Suggested Contract Language: Article 26 (new)

Section 1: All members of the police department hired after January 1, 2009, shall be paid at a rate equal to eighty (80%) percent of the current entry-level wage to officers in their classification. The new hires shall be brought to parity with the department's prevailing wage in equal increments over a four (4) year period.

Issue: Article (New) Certification Pay

Union Position: The Union accepted the Fact Finder's recommendation that the patrolmen earn a yearly \$1,000.00 bonus for passing the firearms qualification test(s).

City Position: The City rejected the Fact Finder's recommendation on this issue.

Discussion: The City objects to paying the bonus for three reasons. First, the City does not believe that "extras" should be added into the contract. The City believes that it pays a fair wage and that the patrolmen do not need bonus payments added to their base wage. Second, the City argues that the Fact Finder's recommendations lead to a situation whereby the patrolmen's wage and benefit increases are higher than the amount paid to other city employees. That is, the Fact Finder's recommendations lead to an internal parity problem within Fairview Park. Finally, the City argues that firearms proficiency is a necessary part of a police officer's job and that the patrolmen should not earn an extra benefit for meeting the job requirements for any policeman.

² The new wage schedule is attached as Appendix B to this report.

The Union contends that the bonus is a standard benefit throughout Northeast Ohio and consequently the patrolmen's contract is substandard compared to other comparable police department contracts. Moreover, the Union contends that the Fact Finder heard all of the arguments surrounding this issue and decided that the Union's position was reasonable. The Union urges the Conciliator to accept the Fact Finder's recommendation.

During the discussions on this issue, the City grudgingly accepted the reality that it would probably have to accept some type of payment in light of the Fact Finder's recommendations. However, the City was adamant that a \$1,000.00 bonus payment was unwarranted, but ultimately agreed that it would pay \$600.00 to the officers; i.e., its final position was a \$600.00 payment. But, the City continues to object to the inclusion of bonus payments into the contract. Therefore, the City demanded that the payment be included in the current Article 27: Special Capacity Pay.

The Fact Finder recognized that the City was facing an uncertain financial future in his award. However, with his recommendation he established an entirely new class of benefit (bonus/certification pay) for inclusion into the contract. In addition, he recommended a significant initial dollar amount for the bonus. Given the current financial climate facing Fairview Park, the Conciliator finds that the amount of the new payment is somewhat high. Consequently, the Conciliator is recommending the City's position on this issue.

Suggested Contract Language: Article 27: Special Capacity Pay

27.02 All bargaining unit members, who after appropriate training, are appointed by the Chief of Police to any of the following positions shall be entitled to an annual payment of Two Hundred and Fifty Dollars (\$250.00) effective each January 1: Bomb Squad, SWAT Team, Terminal Agency Coordinator, Hostage Negotiators, and BAC. *Leads Certified Officers shall be paid \$600.00 per year in two installments of \$300.00 each payable at the end of the first pay period of March and September.*

27.03 All Bargaining Unit employees shall be entitled to no more than two (2) annual payments pursuant to this Article.

Issue: Article 38 Miscellaneous

Union Position: The Union demands that language be added to the contract prohibiting the City from including any non-bargaining unit employee(s) in any formula related to minimum manning. That is, that any such manning formula should include only employees capable of performing law enforcement work.

City Position: The City contends that this discussion related to a management right and is not a proper item for discussion.

Discussion: The discussions on this issue were inconclusive. The City believes that this issue is permissive; that is, it is covered by Management Rights.

However, the City also stated that it has never scheduled non-sworn officers to do police work. In response, the Union gave an example of a situation where it claimed that a non-sworn employee was put in a position where he/she had to perform police duties.

The issue does not appear to be representative of a long term, festering problem. Rather, it seems to be related to an unusual incident. However, 1) in

light the discussions on the issue, 2) given the City's statements that it never schedules non-sworn individuals in positions where they must perform official police duties, and 3) considering the Fact Finder's recommendation, the Conciliator is recommending the Union's position on this issue. That is, the Conciliator is recommending that civilian and/or other non-sworn employees of the police department cannot be placed in positions where they would have to perform police duties.

Suggested Contract Language:

38.04 Effective January 1, 2010, the Employer shall not establish or utilize shift minimum manpower formulae that include any employees other than bargaining unit members.

The above paragraphs outline the complete agreement between the parties on all remaining outstanding issues. All other recommendations put forth by the Fact Finder and signed tentative agreements are included in the Conciliator's report by reference.

Appendix A: Wage Scale

26.01 All bargaining unit employees basic wage rates shall be increased as follows and as more fully described in Schedule A and Schedule B.

Effective January 1, 2009.....2.0% wage increase
 Effective January 1, 2010.....1.75% wage increase

Schedule A

Annual	2009 Actual	2010 Actual
Lieutenant	\$83,538.65	\$85,000.58
Sergeant	\$73,928.02	\$75,221.76
Police Officer 4	\$65,423.02	\$66,567.92
Police Officer 3	\$63,806.18	\$64,922.79
Police Officer 2	\$59,321.07	\$60,359.19
Police Officer 1	\$52,696.08	\$53,618.26
Detective	\$69,645.25	\$70,864.04
Biweekly	2009 Actual	2010 Actual
Lieutenant	\$3,213.03	\$3,269.26
Sergeant	\$2,834.39	\$2,883.99
Police Officer 4	\$2,516.27	\$2,560.30
Police Officer 3	\$2,454.08	\$2,497.03
Police Officer 2	\$2,281.58	\$2,321.51
Police Officer 1	\$2,026.77	\$2,062.24
Detective	\$2,678.66	\$2,725.54
Hourly	2009 Actual	2010 Actual
Lieutenant	\$40.06	\$40.76
Sergeant	\$35.54	\$36.16
Police Officer 4	\$31.45	\$32.00
Police Officer 3	\$30.68	\$31.22
Police Officer 2	\$28.52	\$29.02
Police Officer 1	\$25.33	\$25.77
Detective	\$33.48	\$34.06

Appendix B

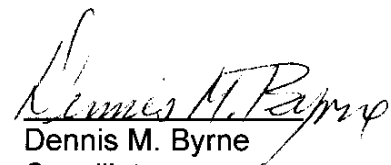
Employees Hired On or After January 1, 2009

	2009 Actual	2010 Actual
Police Officer 2	N/A	\$48,287.35
Police Officer 1	\$42,156.86	N/A
	2009 Biweekly	2010 Biweekly
Police Officer 2	N/A	\$1,857.21
Police Officer 1	\$1,621.42	N/A
	2009 Hourly	2010 Hourly
Police Officer 2	N/A	\$23.22
Police Officer 1	\$20.27	N/A

AWARD:

The Fact Finder's recommendations as modified above shall be implemented.

Signed this 10th day of October 2009, at Munroe Falls, Ohio


Dennis M. Byrne
Conciliator



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October 10, 2009

J. Russell Keith
General Counsel & Assistant Executive Director
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215 – 4213

STATE EMPLOYMENT
RELATIONS BOARD
2009 OCT 15 P 1:04

Re: SERB Case Nos. 08-MED-10-1187/88

Dear Mr. Keith:

I am enclosing the report in the City of Fairview Park v. the OPBA. The report represents a mediated settlement. The parties wished to discuss the issue before the hearing and came to an agreement. However, both sides wanted a full report. The report outlines the parties' agreement as the conciliation award. If you have any questions, please contact me.

Sincerely,

Dennis M. Byrne
Arbitrator