

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF CONCILIATION
PROCEEDINGS BETWEEN:**

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.**
Employee Organization,
and

**THE CITY OF HAMILTON,
Employer.**

CONCILIATION AWARD

**CASE NUMBER:
09-MED-01-0024
(Full-time and part-time Corrections/
Special Police Officers)**

DATE OF HEARING: June 18, 2010

PLACE OF HEARING: Hamilton, Ohio

CONCILIATOR: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:
Tracy Rader, FOP Staff Representative

FOR THE EMPLOYER:
Timothy Werdmann, Assistant Law Director

STATE EMPLOYMENT
RELATIONS BOARD
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PROCEDURAL BACKGROUND

This is a newly formed bargaining unit between the City of Hamilton, Ohio ("City" or "Employer"), and the Fraternal Order of Police, Ohio Labor Council, Inc. ("Union" or "FOP/OLC").

The bargaining unit herein was certified on November 28, 2008, in SERB Case No. 08-REP-07-0108. It consists of about ten employees. Some members of the bargaining unit work as security officers for the Hamilton Municipal Court. The others work as desk officers and booking officers at the headquarters of the Hamilton Police Department. These employees have not previously been part of a bargaining unit. Thus, there is no former or expired collective bargaining agreement.

The FOP/OLC represents the employees of the bargaining unit herein. The FOP/OLC also represents regular police officers employed by the City. The police officer bargaining unit has about 120 members. The City has a long-standing collective bargaining relationship with the police officer bargaining unit. The relationship pre-dates the Ohio Collective Bargaining Law, which became effective in 1984.

The members of the bargaining unit herein work in one of two distinct positions. The positions have different work locations and different work schedules.

The members assigned to the Hamilton Municipal Court work in the courthouse, and have a work schedule consistent with the hours of the court. They do not normally work on weekends or City holidays.

Employees assigned to police headquarters work rotating shifts. They work five consecutive shifts followed by two consecutive days off. Their work schedule can include weekends and holidays. Currently, only two employees are assigned to police headquarters.

The City desires to have more bargaining unit employees assigned to police headquarters in order to allow more regular police officers to engage in patrol and other law enforcement activities. However, due to a reduction in revenue, the City has not recently hired additional employees for this bargaining unit. As a result, more regular police officers are assigned as desk and booking officers, instead of members of this bargaining unit.

The parties engaged in several negotiation sessions in January and February of 2009. They reached tentative agreements on many issues. The tentative agreements on the following issues are hereby incorporated by reference as part of this Award:

- Article 1 - Agreement
- Article 2 - Recognition
- Article 3 - Dues Deduction. Fair Share Fee
- Article 4 - City's Rights and Limitations
- Article 5 - FOP/OLC Business
- Article 6 - Discrimination
- Article 7 - Grievance Procedure
- Article 8 - Investigations and Discipline
- Article 9 - No Strike or Lockout
- Article 10 - Labor-Management Committee
- Article 11 - Layoff Procedures
- Article 12 - Probation
- Article 13 - Seniority
- Article 14 - Personnel Files
- Article 15 - Work Rules and General Orders

Article 16 - Drug Screening

Article 19 - Overtime

Article 24 - Longevity

Article 25 - Preferential Pay

Article 27 - Vacation

Article 28 - Uniforms

Article 29 - Insurances

Article 30 - Sick Leave

Article 31 - Funeral Leave

Article 32 - Military Leave

Article 33 - Family and Medical Leave

Article 34 - Unemployment Compensation

Article 35 - Attendance Incentive

The unresolved issues were presented to a fact finder on May 28, 2009. On July 15, 2009, the fact finder issued his report, which set forth his recommendations on all disputed issues.

The City rejected the report pursuant to the collective bargaining law. As a result, the recommendations in the fact finding report were not implemented. Following the rejection of the report, the parties were in disagreement as to whether this bargaining unit was subject to the conciliation procedures, or whether it was a unit that was permitted to strike. Ultimately, SERB determined that the bargaining unit was a conciliation unit.

Based upon the determination that this bargaining unit can proceed to conciliation following the rejection of the fact finding report, SERB took steps to implement conciliation. On March 12, 2010, the undersigned was appointed by SERB as Conciliator in accordance with Ohio Revised

Code 4117.14(D)(1). The undersigned Conciliator conducted a hearing on June 18, 2010, in the law library of the City of Hamilton Municipal Building.

Both parties submitted timely pre-hearing statements to the Conciliator. The statements set forth their final offers on the unresolved issues. The Conciliator is required to select one of the final offers for inclusion in the collective bargaining agreement. The Conciliator has no authority to make any modifications in the final offers, except were the parties reach a mutual agreement.

Prior to the conciliation hearing, the Conciliator advised the parties that they had the right to have a court reporter present. Both parties affirmatively stated that they were waiving their right to a court reporter. Both parties agreed that the handwritten notes of the Conciliator would be the official record of the hearing.

Section 4117.14 of the Ohio Revised Code provides that the Conciliator must resolve the dispute by selecting, on an issue-by-issue basis, from each of the party's final settlement offers, taking into consideration the following:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement 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;
- (c) 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;
- (d) The lawful authority of the public employer;
- (e) The stipulations of the parties;

(f) Such other factors, 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.

The pre-hearing statements submitted prior to the conciliation hearing of June 18, 2010, listed the following issues as unresolved:

Article 17 - Employee Assistance Program

Article 18 - Work Day and Work Period

Article 20 - Wages

Article 21 - Court Time and Call In

Article 22 - Officer In Charge

Article 23 - Training Officers

Article 26 - Holidays

Article 37 - Duration of Agreement

The pre-conciliation submission of the FOP/OLC listed another issue, Article 36 - Retirement Planning, as an unresolved issue. At the hearing, however, the City stated that it agreed with the FOP/OLC's final offer on this issue. The parties signed a tentative agreement. That tentative agreement is incorporated by reference as part of this Award.

During the conciliation hearing, the parties, with the assistance of the Conciliator, reached tentative agreements on the following issues:

Article 17 - Employee Assistance Program

Article 18 - Work Day and Work Period

Article 21 - Court Time and Call In

Article 22 - Officer In Charge

Article 23 - Training Officers

The tentative agreements on these issues are hereby incorporated by reference as part of this Award.

At this time, the remaining unresolved issues are:

Article 20 - Wages

Article 26 - Holidays

Article 37 - Duration of Agreement

The Conciliator believes that all issues have been resolved, either by this Award, or by the tentative agreements of the parties. However, in the event that any issues remain unresolved, the Conciliator orders that the current practice remain in place.

The Conciliator, after carefully reviewing all of the relevant evidence, together with the arguments of the parties, hereby submits his opinion and Award with respect to the outstanding issues submitted for resolution.

UNRESOLVED ISSUES

Article 20 - Wages

Prior to the recognition of the bargaining unit, employees periodically received “cost of living” increases as approved by City Council. Until recently, City Council usually approved an annual cost of living increase. However, due to current economic conditions, and reduced revenue, the last cost of living increase for bargaining unit members was implemented in July 2007.

Currently, bargaining unit employees are eligible for annual merit increases. These merit increases are approximately two percent each year. Employees receive a merit increase if they meet the requirements, and if they have not reached the maximum wage established for their classification. Each classification has 11 pay steps. Employees are eligible to move up one step each year, provided that their work

performance is deemed to be meritorious.

The final offers of both the City and FOP/OLC retain the 11 steps. However, the Union's offer eliminates the merit system. It provides for advancement to the next pay range on the anniversary date of each employee.

Position of the City

The City's final offer for Article 20 - Wages, is the same offer it proposed in fact finding. It has offered a wage freeze for the remainder of the agreement. However, the City's offer would continue the practice of allowing employees to advance one pay step per year based upon meritorious performance.

The City presented well-documented and detailed information about the financial position of the City of Hamilton, as well as information concerning the causes for the current situation. The City is suffering greatly from the current economic downturn. The evidence shows that the City's unemployment rate is higher than both the national and state averages. In April 2010, the unemployment rate in the City of Hamilton was 11.8 percent. This compares to a statewide rate of 10.7 percent, and a national average of 9.5 percent. Notably, the City's unemployment rate is at its highest level since 1983. The City points out that, when this bargaining unit was recognized in November 2008, the unemployment rate was only 7.1 percent, which is 4.7 percent lower than the rate in April 2010. The City's evidence provides that the average income and average home values in Hamilton are lower than the national average.

Employees in this bargaining unit are paid from the general fund of the City. Most of the general fund revenue is generated by an income tax. The high unemployment

rate has resulted in a decrease in revenue from the income tax of two percent. In 2009, income tax revenue was down 5.17 percent from 2008. 2010 year-to-date revenues are down two percent from 2009.

The City is also concerned with its general fund balance. It points out that experts recommend that the general fund balance be five percent to fifteen percent of annual expenditures. At the end of 2009, the fund balance was \$2.2 million, which is 4.9 percent of annual expense. The City presented additional data showing that there has been a reduction in revenues from property tax and from transfer payments from the State of Ohio. Due to the decrease in revenue, the Employer has attempted to reduce expenses in many areas. For example, it has laid off some employees, negotiated concessions with some of the unions, and delayed the replacement of police cars.

For these reasons, the City asserts that it would be financially imprudent to increase wages for this bargaining unit. It points out that the last general pay increase for non-union employees was in 2007.

Position of the Union

The Union notes that the employees in the bargaining unit have not had a pay increase since July of 2007. It acknowledges that a few employees have received merit increases since the time that the bargaining unit was recognized.

The Union emphasizes that, since September 1, 2008, the police officer bargaining unit has received a seven percent wage increase. The police officers received a three percent pay increase in September of 2008, and a four percent pay

increase in September of 2009.

The Union acknowledges that the police officer bargaining unit did agree to some concessions. These included three unpaid furlough days during 2010. In addition, the police officers agreed to a two percent decrease in wage rates effective January 1, 2010, unless the City was successful in obtaining grant money that could be used to pay police officer salaries. However, the City agreed that, effective January 1, 2011, wage rates would return to the wage level in effect on December 31, 2009. The Union asserts that, even with the concessions, the police officers have had significant increases in wages since 2007.

The Union points out that there are currently less than ten bargaining unit members employed by the City. Four of these employees only work on a part-time basis. Therefore, the Union asserts that the cost to the City will be relatively small.

Discussion

The Conciliator notes that the fact finder did an excellent job of explaining the financial situation of the City in his report. The Conciliator does not need to repeat the fact finder's comments herein. The fact finder did note that the City is not in a receivership situation, nor does it have a negative general fund balance. The fact finder concluded that, despite its current financial status, the City is able to finance modest economic enhancements for this bargaining unit.

At fact finding, the Union proposed wage increases of three percent per year. The fact finder recommended a pay increase of two percent per year. The Union has adopted the recommendation of the fact finder as its final offer in this conciliation.

The Conciliator does not believe that it would be proper to require employees in this bargaining unit to have a wage freeze for the term of the agreement. They have been under a wage freeze for three years, except for merit increases. However, only a few of the employees in the bargaining unit received merit increases.

The recommendation made by the fact finder was based upon a thorough review of the City's financial situation. The Conciliator has also reviewed the documentation provided by the City, and has come to the same conclusion as the fact finder. The Conciliator notes the disparity of the wages increases received by the police officer's bargaining unit, compared to the members of the bargaining unit herein. As has been previously noted, the employees in this bargaining unit often work side-by-side with police officers, and often perform the same or similar duties.

The Conciliator has carefully considered the arguments of both parties with regard to wages. The options available to the Conciliator are limited by statute. Either the City's or the Union's final offer must be awarded. Even if a Conciliator believes that the best solution would be somewhere in between the positions of the parties, he is required to select one or the other.

Due to the passage of time, it is too late to provide a general wage increase for 2009. Thus, a wage freeze was in effect for 2009. As will be discussed below, the Conciliator believes that the interests of the parties and the public are best served by an agreement that will extend to December 31, 2012. Thus, awarding the City's final offer would result in a continuation of the wage freeze for an additional three years.

The Conciliator believes that the Union has made the more persuasive argument for its position. The increase is modest compared with the wage increases received by

regular police officers over the last two years. Although the City has many financial challenges, it has not presented sufficient evidence to refute the findings of the fact finder, who determined that the City is able to finance a modest economic enhancement. Therefore, the Conciliator orders that the Union's final offer on wages be included in the new collective bargaining agreement.

Article 26 - Holidays

Only those bargaining unit members assigned to police headquarters are required to perform service on holidays. Employees who work in the Hamilton Municipal Court do not work on holidays, but receive eight hours of regular pay for each holiday.

Position of the City

The City's final offer is to incorporate the current practice for holidays into the agreement. That practice provides bargaining unit members with 136 hours of holiday pay per year. This includes 11 designated holidays, five personal days, and the employee's birthday.

Under the City's offer, employees who work on one of the six "premium holidays" have a choice between taking eight hours off on another day and receiving compensation of one and one-half times the regular pay rate for working on the holiday. Alternatively, employees may elect to be paid two and one-half times the regular pay rate for working on a holiday, with no additional time off.

The City asserts that there is no reason to change the current practice simply because the employees are now in a bargaining unit. It states that the Union's offer would increase cost to the City. Further, the City argues that the Union's rationale for its

position is flawed. The City notes that the Union's offer is to provide bargaining unit members with the same holiday benefit as the members of the police officer bargaining unit. The City asserts that the agreement with the police officer bargaining unit has evolved over a series of collective bargaining agreements spanning many years. The bargaining unit herein cannot expect to obtain the same benefits in the first contract.

Position of the Union

The Union's offer provides for an increase in total holiday leave to 144 hours. It provides for nine designated holidays and seven personal days. In addition, under the Union's offer, employees can use Martin Luther King Day as a floating holiday. Employees would also be entitled to have their birthday as a holiday.

The Union's offer also provides that an employee who works on one of the six "premium holidays" may have a day off on another day and receive pay at two times the regular rate for working on the holiday. In the alternative, the employee may elect to receive three times the regular rate of pay without additional time off.

The Union states that its offer would provide bargaining unit members with the same holiday benefits as the police officer bargaining unit. It argues that bargaining unit members often work side-by-side with regular police officers. It argues that regular police officers who are assigned as desk officers at police headquarters perform work that is identical to that of bargaining unit members. The Union points out bargaining unit members belong to FOP Lodge 38, the same lodge as the police officers.

The Union contends that it is inequitable for two employees doing the same work to receive different compensation for working on a holiday. The Union points out that, under the City's offer, if a bargaining unit member works with a regular police officer on

a holiday, the police officer would receive compensation at two or three times his or her regular pay rate, while the bargaining unit member would only receive one and one-half or two times his or her regular pay rate. The Union maintains that this situation is particularly unfair because police officers have a higher regular rate of pay.

Discussion

A basic principle used in fact finding and conciliation is that the party seeking to change the *status quo* has the burden of proof. Thus, in the absence of substantial evidence of the need for a change, the *status quo* should remain in place. In this case, the Employer is proposing the retention of the current practice. The Union, however, is proposing that the holiday benefit be increased. It thus has the burden of proof.

The argument used by the Union is that bargaining unit members should have the same holiday benefit as police officers. It emphasizes that it is inequitable for two officers who are in different bargaining units, but perform the same work, to have different holiday compensation.

The City's argues that, in negotiating their first contract, bargaining unit members cannot expect to achieve parity with the police officers. This argument is well taken. The terms and conditions set forth in the collective bargaining agreement with the police officers have evolved over a long period of time. Presumably, the holiday benefit has been increased over time. The police officer bargaining unit may have given concessions on other issues in order to obtain increases in the holiday benefit.

The Union has not presented compelling evidence of the need for a change in the current policy. The compensation for holidays currently provided to bargaining unit members is consistent with past practice. There is no evidence showing that the holiday

benefits provided to bargaining unit members are substandard compared to the holiday benefits of employees working in similar positions in other jurisdictions. The fact that bargaining unit members work with police officers who have slightly different holiday benefits is not sufficient to warrant the implementation of a new provision. Therefore, the Conciliator will order that the holiday language set forth in the Employer's final offer be included in the new collective bargaining agreement.

Article 37 - Duration

The City's final offer states that the agreement will become effective upon execution, and will expire on December 31, 2011. The final offer of the Union is for the agreement to be effective retroactive to January 1, 2010. The Union's offer sets forth that the contract will expire on December 31, 2012.

The Conciliator notes that the fact finder recommended a three-year collective bargaining agreement, beginning January 1, 2009, and ending December 31, 2011. The report of the fact finder was issued in July 2009. It is unusual for an entire year to pass between the fact finder's report and a conciliation award. At this time, the agreement cannot be made retroactive from January 1, 2009. The Conciliator, however, is in agreement with the fact finder that a three-year agreement is appropriate. In this case, the parties have been in a state of uncertainty since the unit was recognized in November 2008.

Under the City's final offer, the agreement would expire 17 months after the issuance of this conciliation report. A collective bargaining agreement of such short duration is not in the best interests of bargaining unit members, the City, or the public. In this case, this is the first contract between the parties. A longer agreement will give

the parties time to adjust to the collective bargaining relationship, and to adjust to the terms of the agreement. They will make judgments as to which provisions should be renegotiated in the next agreement. Presumably, negotiations for a second collective bargaining agreement will be much quicker and smoother. Therefore, the Conciliator will order that the Union's proposal for Article 37- Duration, be included in the collective bargaining agreement.

CONCLUSION

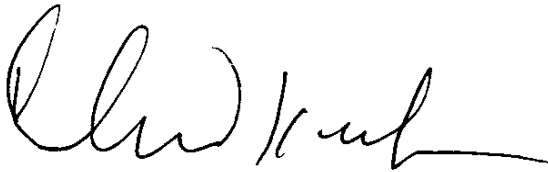
In conclusion, the Conciliator submits his decision with respect to the outstanding issue and orders that the Award be incorporated into the collective bargaining agreement of the parties.

A handwritten signature in black ink, appearing to read 'C. W. Kohler', written over a horizontal line.

Charles W. Kohler, Conciliator

CERTIFICATE OF SERVICE

I do hereby certify that on July 30, 2010, a copy of the foregoing Conciliation Award was served upon Tracy Rader, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215 by regular U.S. Mail, postage prepaid, and by electronic mail at trader@columbusrr.com; Timothy Werdmann, City of Hamilton, 345 High Street, Hamilton, Ohio 45011, by regular U.S. Mail, postage prepaid, and by electronic mail at werdmant@ci.hamilton.oh.us; and Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, by regular U.S. Mail, postage prepaid.

A handwritten signature in black ink, appearing to read "Charles W. Kohler", written over a horizontal line.

Charles W. Kohler, Conciliator