

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of: :
: **09-MED-03-0195**
Elyria Police Patrolmen's Association: :
: **CONCILIATION AWARD**
and :
:
:
City of Elyria : **April 13, 2012**

APPEARANCES

For the Union:

Robert M. Phillips, Attorney, Faulkner, Hoffman & Phillips, LLP
Tom Baracskai, President
Richard Buckway, Treasurer
William Witt, Member

For the Employer:

Robin Bell, Attorney, Clemans Nelson
Elayne Siegfried, Assistant Safety Service Director
Daniel P. Jaykel, Assistant Safety Service Director

**Daniel G. Zeiser
Fact Finder
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I. BACKGROUND

The Conciliator was appointed by the State Employment Relations Board (SERB) on February 2, 2012, pursuant to Ohio Revised Code Section 4117.14(D)(1). The parties are the Elyria Police Patrolmen's Association (Union or EPPA) and the City of Elyria (Employer or City). The City is located in north central Ohio and is the county seat of Lorain County. Founded in 1817, it has a population of 54,533 according to the 2010 Census. The Union represents full time, sworn police patrol officers. Currently, there are approximately sixty-four (64) officers in the bargaining unit.

The collective bargaining agreement expired on July 1, 2009. The parties have agreed to continue its terms while attempting to negotiate a new agreement and during the fact finding and conciliation process. They began negotiations in mid-2009 and have held a number of negotiating sessions. In March 2011, they utilized a federal mediator without success. They met with the Fact Finder in September 2011 and his report was issued on January 5, 2012. The EPPA rejected the report and the parties entered into conciliation. The Conciliator was appointed on February 2, 2012.

II. THE HEARING

The conciliation hearing was held on Wednesday, March 21 at Elyria City Hall, 131 Court Street, Elyria, Ohio. Each party provided a pre-hearing statement. The hearing began at 9:00 a.m and adjourned at approximately noon. The Conciliator attempted mediation. However, it was necessary to issue this report. During negotiations, the parties reached tentative agreements on Articles 8, Pledge against Discrimination and Coercion, Article 9, Rules and Regulations, Article 12, Section A - Overtime, Sections 12.4 and 12.7 and Section B - Overtime Equalization, Section 12.12,

Article 25, Grievance Procedure, Article 26, Employee Rights, Article 28, Procedure for Scheduling Days Off, and a new Article regarding Personnel Files. These tentative agreements are incorporated into this award.

The parties jointly introduced the following exhibit into evidence:

1. Agreement between the City of Elyria, Ohio and the Elyria Police Patrolmen's Association, 2006-2009.

Additionally, the parties introduced the following exhibits into evidence:

Union Exhibits

1. Collective Bargaining Agreement.
2. Notice to Negotiate.
3. Featsent v. City of Youngstown, U. S. Sixth Circuit Court of Appeals, 70 F.3d 900.
4. SERB Benchmark Report re Police Officer.
5. Sargent & Associates Report.
6. Conciliation Award by Susan Grody Ruben, City of Elyria and Elyria Firefighters, IAFF local 474.
7. Fact Finding Report of James E. Rimmel.

Employer Exhibits

1. Fact Finder's Report.
2. U. S. Census Bureau QuickFacts.
3. Demographic Information for Comparable Jurisdictions.
4. FLSA Comparison.
5. 2011 Overtime Rates.
6. Increase in Longevity 2005 to 2012.
7. Longevity for Comparable Jurisdictions.
8. Sick Leave Incentive.

The issues remaining at impasse included:

1. Article 12, Overtime.
2. Article 13, Wages.
3. Article 13, Longevity.
4. Article 19, Sick Leave.
5. Article 36, Duration.

At the hearing, the parties agreed upon the wage issue and the duration of the agreement. The bargaining unit will receive a 1% increase effective July 1, 2011 and a 1.5% increase effective July 1, 2012. The Agreement will be effective from July 1, 2010 through June 30, 2013.

The Ohio public employee bargaining statute provides that SERB shall establish criteria the Fact Finder is to consider in making recommendations. The criteria are set forth in Rule 4117-9-05(K) and 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 interests 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) 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 the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

The Conciliator hopes the discussion of the issues is sufficiently clear to the parties. Should either or both parties have any questions regarding this Report, the

Conciliator would be glad to meet with the parties to discuss any remaining questions and clarify any ambiguities.

III. ISSUES AND RECOMMENDATIONS

Introduction

At the hearing, the parties agreed upon the wage issue and the duration of the agreement. The bargaining unit will receive a 1% increase effective July 1, 2011 and a 1.5% increase effective July 1, 2012. The Agreement will be effective from July 1, 2010 through June 30, 2013. The Conciliator encourages the parties to consider negotiating a contract year that follows the calendar year. This is more suitable to collective bargaining. However, this is a matter for the parties to address in bargaining, especially since the City and other units also follow a non-calendar year bargaining timeframe, and the Conciliator simply encourages the parties to consider a change.

The City of Elyria has experienced financial difficulties in recent years. Its population has slowly decreased from its peak of 57,538 according to the 1980 Census. The City and the County of Lorain have suffered losses in the steel and automobile industry. However, Elyria has done a good job of managing its finances. It made difficult decisions to cut personnel and services to deal with losses in revenue. It expects some additional losses as the State of Ohio eliminates estate taxes.

The Union points out that the City has had modest improvement in revenues versus expenditures. The department operates under a special police levy as well as a share of the general fund. The bargaining unit employees had their wages frozen while the City dealt with its financial issues. And compared to similar jurisdictions, the unit is behind. All these factors point to the unit enjoying some improvements.

Issue: Article 12, Overtime

Position of the Union: The overtime rate for hours worked should include the longevity entitlement. It should be retroactive to July 1, 2011.

Position of the City: The City does not contest that longevity should be included. It objects to it being retroactive to 2011.

Findings: The parties agree what longevity should be included in the overtime calculation. They disagree as to when that should be effective. The Union wants to start in June 2011, while the City adopts the Fact Finder's recommendation that it begin January 1, 2012. The City contends that the Fact Finder did not err and that it would be a burden for it to have to go back nine (9) months to determine the overtime pay for each member of the unit. The Union submits that the Department of Wage and Hour Division's interpretation requires it be included and a series of court opinions has found likewise. Since longevity is controlled by contract and not discretionary, it must be included in the overtime rate. The Union asserted that the City has the information needed and it would not be a burden to calculate overtime retroactively.

The Fact Finder concluded that overtime should be effective January 1, 2012. He noted particularly that there was little information as to the total cost to the City as a result of the proposal. At the hearing, the Union introduced a report by Sargent & Associates as to the cost of longevity and factoring longevity into overtime. According to the report, it would cost the City \$74,000 to include longevity into overtime retroactive to June 2011. Adding in 19.5% for retirement costs, 1.45% for medicare, and 4% for workers' compensation costs, the total would be \$92,500. Given the City's financial situation and that the Fact Finder recommended longevity be included in the overtime

rate beginning January 1, 2012, the cost appears to exceed the benefit of making it retroactive for an additional seven (7) months.

The Union also argued that other City units have had longevity included in their overtime rate for years. Internal comparisons are not always appropriate. Police units are different from fire units, which differ from service units, which are different than clerical units. The various units differ in terms of time off, the opportunity to earn overtime, and other factors. Pointing to a single benefit enjoyed by other units does not consider the differences in the units, the bargaining history and what was conceded to get that benefit, and the working conditions of the units.

Finally, Revised Code Section 4117.14(G)(11) provides that a conciliator can award increases that are effective only in the next fiscal year following the award. Since there is no evidence that the City waived any rights under this section, it is not clear that including longevity in overtime can be made retroactive to 2011. On this record, the Conciliator agrees with the Fact Finder that including longevity in overtime should begin January 1, 2012.

Recommendation: Article 12.1 should be amended to read “In addition, for all hours actually worked, the overtime rate shall include longevity entitlement effective January 1, 2012.

Issue: Article 13, Wages, 13.8 Longevity

Position of the Union: Retain longevity.

Position of the City: Adopt the Fact Finder’s recommendation.

Findings: The Union contends that all Elyria safety forces have longevity as an element of compensation. It is well accepted in the public sector that longevity is a part of an employee's earnings and has been so historically. This unit is no different. To eliminate it should only be as a result of bargaining between the parties. Eliminating longevity would also create a two (2) tier system and such systems have not fared well within bargaining units, creating dissension and tension within a unit. The Association also wonders what would happen to a new hire without longevity who is promoted to sergeant, which rank has longevity. The Association acknowledges that the longevity its members receive is generous. However, this is part of the wage structure and compensates for lower salaries than comparables. Section 13.8 defines longevity as a salary increase and only the parties should change it.

The City counters that the longevity is simply too generous to continue. It keeps growing and needs to be reined in. The parties must start somewhere. From 2005-12, longevity increased \$1100 per unit member. The increases begin at 1% each year and reach a maximum of 20%. This is an aberration of the concept of a longevity bonus. The Fact Finder agreed and eliminated it as a quid pro quo for the wages increases he recommended. He did not err.

There is no dispute that the longevity increases are generous. For a City in the financial condition Elyria finds itself, it is important to control its costs. Reducing, if not eliminating, longevity would go a long way in managing its costs. The Conciliator understands the City's desire to reduce or eliminate this generous benefit. There is also no dispute that longevity has been part of the wage structure for the unit for many years. It is one way the City attracts police officers. Longevity factors into an employee's

earnings in other ways, also. Eliminating it through conciliation could have serious unintended consequences. The best way to deal with this situation is through collective bargaining, when the parties can discuss how it will affect the parties and find the best way to implement it. While the Fact Finder concluded that eliminating longevity for new hires was a quid pro quo for the wage increases, it appears he only factored in the cost and did not take into account how longevity will affect other matters. For these reasons, the Conciliator concludes that eliminating longevity is not appropriate in this conciliation.

Issue: Article 19, Sick Leave

Position of the Union: Section 19.10 should read:

An Employee who does not use any of his sick leave in any period consisting of four (4) consecutive months shall be granted four (4) hours of compensatory time. An Employee who does not use any of his sick leave in any period consisting of eight (8) consecutive months shall be granted eight (8) hours of compensatory time. An Employee who does not use any of his sick leave in any period consisting of twelve (12) consecutive months shall be granted sixteen (16) hours of compensatory time and shall continue to receive sixteen (16) hours of compensatory time for every four (4) months until such time as he uses sick leave. The Employee shall be permitted to use this compensatory time in accordance with the provisions of Article 11 of this Agreement.

Position of the City: Adopt the Fact Finder's recommendation.

Findings: The Union proposes improving the sick leave article. Currently, employees receive five (5) hours of compensatory time for every four (4) consecutive months during which they use no sick leave. The Union argues that the current incentive has worked well and would work better if improved. It seeks what police supervisors receive. The City responds that the current system is generous and needs no improvement. While supervisors are offered a more generous incentive, supervisors do not have the same opportunity to earn compensatory time as do the bargaining unit

members. The supervisory unit is a rank unit and a smaller one. It is appropriate to limit this benefit to that unit.

The Association concedes that the current system is working, but urges that improving it would make it work better. The City points out that the improvement the Association seeks would cost too much, since the supervisory unit is much smaller. Additionally, the bargaining unit has plenty of opportunity to earn compensatory time. On this record, the Association has not established the need for greater compensatory time.

The Conciliator hereby incorporates the tentative agreements reached by the parties into this award.

Dated: April 13, 2012

A handwritten signature in blue ink, appearing to read "Daniel G. Zeiser", is positioned above a horizontal line.

Daniel G. Zeiser
Conciliator